(26,917)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 281.

CANADIAN NORTHERN RAILWAY COMPANY, PETITIONER,

vs.

GUS EGGEN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 6, 1919.

a Pleas and Proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1918, of said Court, Before the Honorable William C. Hook, the Honorable John E. Carland, and the Honorable Kimbrough Stone, Circuit Judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to-wit: on the twenty-seventh day of September, A. D. 1917, a transcript of record pursuant to a writ of error directed to the District Court of the United States for the District of Minnesota, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein Gus Eggen was Plaintiff in Error and the Canadian Northern Railway Company was Defendant in Error, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

1 *Answer.*

United States District Court, District of Minnesota, Second Division.

GUS EGGEN, Plaintiff,

vs.

CANADIAN NORTHERN RAILWAY COMPANY, Defendant.

The defendant, Canadian Northern Railway Company, for its answer to the complaint herein,

I.

Admits that it is a railway corporation and that it operates a line of railway as alleged in the first paragraph of the complaint herein. Admits that on or about the 20th day of November, 1913, plaintiff was employed by this defendant as a freight train brakeman and switchman.

II.

Except as hereinbefore admitted defendant denies each and every allegation, matter and thing contained in said complaint and any knowledge or information thereof sufficient to form a belief.

III.

Further answering the complaint and as a separate defense, defendant alleges that the cause of action set forth in the complaint did not accrue within one year prior to the time when this action was brot and that this action was not brot within one year after the happening of the accident or negligent acts complained of and as set forth in said complaint, and the said action is barred by the express terms and provisions of the Laws and Statutes of the Dominion of Canada as hereinafter set forth. That heretofore and on or about the 24th day of October 1903, there was duly enacted into Law a Statute of Canada being Chapter 58 3 Edw. VII entitled "An Act to Amend and Consolidated the Law Respecting Railways" (assented to 24th of October, 1903), contained provisions following, to-wit:

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:

2 I.—Short Title.

I. This Act may be cited as the Railway Act, 1903.

II.—Interpretation.

2. (4) "Company

(*a*) means a railway company, and includes every such company and any person having authority to construct or operate a railway.

(21) "Railway" means any railway which the company has authority to construct or operate, and includes all branches, sidings, stations, depots, wharfs, rolling stock, equipment, stores, property real or personal and works connected therewith, and also any railway bridge, tunnel, or other structure which the company is authorized to construct.

Action for Damages.

"306. All actions or suits for indemnity for any damages or injury sustained by reason of the construction or operation of the railway shall be commenced within one year next after the time when such supposed damage is sustained, or, if there is continuation of damage, within one year next after the doing or committing of such damage ceases, and not afterwards."

That the said Chapter 58 as the same is printed and published in the Statutes of Canada 3 Edw. VII 1903 Vol. 1, being Chapter 37, of the Revised Statutes of Canada 1906, entitled "An Act Respect-

ing Railways" are hereby expressly made a part of this Answer as if fully set out and incorporated herein. That the above quoted provisions of the Statutes have been ever since the passage thereof, and still are, in full force and effect, and the Law of the Dominion of Canada. That said provisions were in full force and effect and the law of the Dominion of Canada at all the times alleged in the complaint herein.

Wherefore defendant prays that this action be dismissed, that plaintiff take nothing thereby, and that it have its costs and disbursements herein.

HECTOR BAXTER,
Attorney for Defendant, 916 Lumber Exchange, Minneapolis, Minnesota.

Endorsed: Filed in the District Court on May 8, 1916.

3 (*Amended Answer.*)

The defendant for its amended answer to the amended complaint herein:

I.

Admits paragraph I thereof.

II.

Admits that on or about the 29th day of November 1913, plaintiff was employed by this defendant as a freight train brakeman and switchman.

III.

Further answering the complaint and as a separate defence, defendant alleges that the cause of action set forth in the complaint did not accrue within one year prior to the time when this action was brot, and that this action was not brot within one year after the happening of the accident or negligent acts complained of and as set forth in said complaint, and the said action is barred by the express terms and provisions of the Laws and Statutes of the Dominion of Canada as hereinafter set forth. That heretofore and on or about the 24th day of October 1903, there was duly enacted into Law a Statute of Canada being Chapter 58 3 Edw. VII entitled "An Act to Amend and Consolidate the Law Respecting Railways" (assented to 24th of October, 1903), containing provisions following, to-wit:

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:

I.—Short Title.

1. This act may be cited as the Railway Act, 1903.

II.—Interpretation.

2. (4) "Company
(a) means a railway company, and includes every such company and any person having authority to construct or operate a railway.
(21) "Railway" means any railway which the Company has authority to construct or operate, and includes all branches, sidings, stations, depots, wharfs, rolling stock, equipment, stores, property real or personal and works connected therewith, and also any railway bridge, tunnel, or other structure which the company is authorized to construct.

4 Action for Damages.

"306. All actions or suits for indemnity for any damages or injury sustained by reason of the construction or operation of the railway shall be commenced within one year next after the time when such supposed damage is sustained, or, if there is continuation of damages, within one year next after the doing or committing of such damages ceases, and not afterwards."

That the said Chapter 58 as the same is printed and published in the Statutes of Canada 3 Edw. VII 1903 Vol. being Chapter 37, of the Revised Statutes of Canada 1906, entitled "An act Respecting Railways" are hereby expressly made a part of this Answer as if fully set out and incorporated herein. That the above quoted provisions of the Statutes have been ever since the passage thereof, and still are, in full force and effect, and the Law of the Dominion of Canada. That said provisions were in full force and effect and the law of the Dominion of Canada at all the times alleged in the complaint herein.

IV.

Further answering the amended complaint herein defendant alleges that on or about the 29th day of November 1913, the said Gus Eggen plaintiff herein, entered into a contract of employment with this defendant wherein and whereby he agreed that before commencing to work for this defendant, he would familiarize himself with the rules of the company, and that he would comply strictly with all of its rules and regulations, and in no case or under any circumstances would he acquiesce in or consent to any violation of said rules. That said contract of employment contained rules and provisions for caution as to the personal safety of employees, which rules were well known to the plaintiff herein at the time of the accident described in the complaint. That plaintiff herein, by the aforesaid contract, agreed in writing to comply with the requirements

of said rules; and a copy of said contract with the said rules therein contained, is hereto attached, and made a part of this answer as if set out in full, and is marked "Exhibit A."

V.

That all the rules and regulations respecting the employment and conduct of employees of this defendant company have been made under and pursuant to the laws of the Dominion of Canada in that respect made and provided. That heretofore, and on or about the 24th day of October 1903 there was duly enacted into Law a Statute of Canada being Chapter 58 3 Edw. VII entitled "An Act to Amend and Consolidate the Law respecting Railways" (assented to 24th of October, 1903), containing provisions followings, to-wit:

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:

I.—Short Title.

I. This Act may be cited as the Railway Act 1903.

IV [Commission].

Name, Constitution, Duties, etc.

8. The railway Commission of the Privy Council is hereby abolished, and, in lieu thereof, there shall be a Commission, to be known as the "Board of Railway Commissioners for Canada, consisting of three members who shall be appointed by the Governor in Council, at any time after the passing of this Act, and from time to time as vacancies occur. Such Commission shall be a Court of Record, and have an official seal which shall be judicially noticed."

That the said Chapter 58 as the same is printed and published in the Statute of Canada 3 Edw. VII 1903, Vol. 1, and Chapter 37 of Revised Statutes of Canada 1906, entitled "An Act Respecting Railway," are hereby expressly made a part of this answer as if fully set out and incorporated herein. That the above quoted provision of the Statute has been, even since the passage thereof, and still is, in full force and effect, and the law of the Dominion of Canada. That pursuant to and under the Authority of said Statute there was duly created and organized the Board of Railway Commissioners for Canada therein provided for, which said Board has ever since existed and still exists under the Authority of said Law, and all Laws of Canada passed subsequently thereto. That there was duly enacted into law, a provision concerning or respecting by-laws, rules and regulations made by the railroad companies, which is Section 307 of Chapter 37, of the Revised Statute- of Canada 1906 and which reads as follows:

By-Laws, Rules, and Regulations.

307. The Company may, subject to the provisions and restrictions in this and in the special act contained, make by-laws, rules or regulations, respecting,—

(g) The employment and conduct of the officers and employees of the Company;

That the above quoted provision of the Statute has been ever since the passage thereof, and still is, in full force and effect, and the Law of the Dominion of Canada. That under and pursuant to the authority of said provision, the hereinbefore mentioned rules, were made and promulgated by this defendant company, and the same were approved by order of the Board of Railway Commissioners for Canada on the 12th day of July 1909; that among said rules so made, promulgated and approved were the rules contained in said Exhibit "A" aforesaid.

VI.

Further answering the amended complaint herein, defendant alleges that the injuries complained of by plaintiff, were caused by and due to his own carelessness and negligence, and not by reason of any act or omission on the part of this defendant, its agents, servants or employees. That said injuries complained of by plaintiff were caused by and due to risks and hazards which the plaintiff then and there voluntarily and knowingly assumed. That said plaintiff voluntarily and knowingly assumed the risks of defendant's negligence, if any, in this, that he, the said plaintiff, knowingly and wilfully violated the rules of this company hereinbefore set forth, in jumping on and standing on the brake shaft as alleged in his complaint.

VII.

Further answering the complaint and as a separate defense alleges that heretofore and on or about the 23rd day of March, 1911, there was duly enacted into law a statute of the Province of Saskatchewan, being Chapter 9 of the Laws of Saskatchewan for 1910 and 1911 entitled "An Act Respecting Compensation To Workmen For Injuries Suffered In The Course of Their Employment," assented to March 23, 1911, containing provisions following, to-wit:

His Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan enacts as follows:

Short Title.

1. This Act may be cited as "The Workmen's Compensation Act."

Application of Act.

2. This Act shall apply only to employment by the principal on or in or about a railway, factory, mine, quarry or engineering work;

or in or about any building which is either being [constricted] or repaired or being demolished.

Interpretation.

3. In this Act unless the context otherwise requires the expression:

1. "Railway" means a road used by a private person or public company on which carriages run over metal rails and shall include railways or tramways worked by the force and power of steam, electricity or of the atmosphere or by mechanical power or any combination of them.

2. "Principal" in the case of a railway means the person or company owning or operating the railway; in the case of a factory, mine or quarry means the owner, occupier or operator thereof; in the case of an engineering work or other work specified in this act means the person undertaking the construction, alteration, repair or demolition;

11. An action under this Act shall not be maintainable unless it is commenced within six months from the occurrence of the accident causing the injury or in case of death within six months from the time of death.

15. The amount of compensation recoverable under this Act shall not exceed either such sum as is found to be equivalent to the estimated earnings during the three years preceding the injury of a person in the same grade employed during those three years in a like employment or the sum of $1,800 whichever is larger but shall not exceed in any case the sum of $2,000.

20. This Act shall come into force on the first day of November 1911.

That the above quoted provisions of the Statutes have been ever since the passage thereof, and still are, in full force and effect, and the law of the Province of Saskatchewan. That said provisions were in full force and effect and the law of the Province of Saskatchewan, at all the times alleged in the complaint herein.

That the cause of action set forth in the complaint did not accrue within the six months prior to the time when this action was
8 brought, and that this action was not brought within six months after the happening of the accident or negligent acts complained of and as set forth in said complaint, and the said action is barred by the express terms and provisions of the laws of Saskatchewan as hereinbefore set forth.

Wherefore, defendant prays that this action be dismissed, that plaintiff take nothing thereby, and that it have its costs and disbursements herein.

HECTOR BAXTER,
H. SEGER SLIFER,
Attorneys for Defendant,
916 *Lumber Exchange, Minneapolis, Minnesota.*

EXHIBIT "A."

Form 1.

Canadian Northern.

Application for Employment as Switchman.

The Superintendent will require all persons, before entering the service of this Company, to answer the following interrogatories in their own handwriting. Blanks must be filled up and signed in triplicate, two copies being forwarded to the Superintendent with any letters of recommendation wihch applicant may have, of which a record will be made, and all letters other than those of Canadian Northern issue returned. Letters of recommendation or clearance issued by the Canadian Northern Railway, may be held by the Superintendent who will, if requested to do so, make notation of all previous service on the clearance which is issued from his office. The applicant will keep the third copy of this personal record for future reference. Superintendents will forward to General Superintendent, Winnipeg, one of the copies sent them.

1. Name in full Gus Eggen.
2. Birthplace Vienna Province South Dakota.
3. Age 24 years last birthday.
4. Nationality Norwegian.
5. Married or single, single.
6. If married where does your family reside? No. — St. —— Town or City —— Province ——

9 7. If single, where does your family or nearest relative reside, and what is his (or her) name? Mother Mrs. H. Eggen No. — St., —— Town or City Vienna Province So. Dakota.

8. How many years' experience in Railroad service? 3 years.
9. Ever injured; if so, on what road and to what extent? No.
10. In what business before entering Railroad business? Labourer. At what place? Clark Province South Dakota.
11. Name All Roads on which you have been employed:

Railroad.	Name of superintendent.	Address.	In what capacity.	In what year.
G. N.	J. W. McKinnon.	Wilmar, Minn.	Brakeman.	Oct. 19, 1910, Apr. 13, 1912.
C. P. R.	W. J. Uren.	Calgary, Alta.	Switchman.	July 2, 1912. May 13, 1912.

12. If you have been employed before on any Division of this Road, or Branches, state which one, when, and in what capacity? No.
13. On what Road last employed. Can. Pacific. Cause of leaving? Dismissed unknown cause.
14. Number of letters of recommendation enclosed None.

15. How have you been occupied since your last employment terminated? Labouring at Edmonton, Crown Paving Co., Mr. Levoy.

16. Have you read, and do you understand the following Rule of the Canadian Northern Railway Company?

Caution as to Personal Safety.

17. Special care must be exercised by all persons coupling cars as the coupling of cars or engines cannot be uniform in style, size or strength, and is liable to be broken, as for various causes it is dangerous to expose between the cars the hands, arms or persons of those engaged in coupling, all employes are enjoined before coupling cars to examine so as to know the kind and condition of the coupling apparatus, draw heads and draw bars. Under no circumstances in coupling cars or doing any other work is the hand or foot to be placed in a dangerous position when the work could be done by the use of a stick, even although the latter process is much slower. Stepping upon the front and rear of approaching engines, going between cars while the same are in motion, and similar imprudent actions are strictly prohibited. Employes are required to see for themselves that the machinery, tools, cars, engines or implements which they are expected to use are in proper condition for the service required, and if not, to put the same in proper condition before using them. If a defective or dangerous condition is discovered or known to exist in the construction of tracks, structures, equipment, appliances, or tools or other property, whereby hazard exists or casualty might result, immediate and full report must be telegraphed to the head of the department and to the superintendent.

Over.

18. Do you agree to comply with the requirements of the foregoing rule in case you enter into the Company's employ? Yes.

19. You are notified that if you, or any other employee, cho-ses to violate the requirements of any other rules contained in the Book of Rules of the Canadian Northern Railway Company, you do so solely at your own risk. The Company expects you and all other employees to comply strictly with all its rules and regulations, and does not, and will not, in any case acquiesce in or consent to any violation of them. Do you understand that all violations of the Rules of the Company by you or any other employee of the Company, whether habitual or otherwise, are not consented to or acquisced in by the Company? Yes.

20. Are you related to any officer or employee of this Company? If so, state to whom, and how related: No.

21. I hereby agree that before commencing to work for the Company, I will familiarize myself with the location and condition of the tracks, ways, machinery and plant of the Company, and I also

agree to familiarize myself with all obstructions that there may be along the line of the Company's railway.

22. I am in receipt of a copy of the rules of the Canadian Northern Railway Company, and undertake to familiarize myself with and abide by the said rules. Yes.

11 This application was made by

GUS EGGEN,
(Sign your name in full, no initials.)

Located at *Edmonton, Alta.*

Witness:
W. MacLEOD,
G. Y. M.

Date Sept. 19, 1913.

No. 14275.

Personal Record.

Name Gus Eggen.
Occupation switchman.
Date of Application Sept. 19, 1913.
Date Employed " 22, 1913.
Division Westn. 3rd.

Above to be filled in by Division Superintendent.

Description of Person Named Within.

1. Height 5 10½.
2. Form Medium.
3. Weight 155.
4. Complexion dark.
5. Color of Hair dark brown.
6. Color of Eyes gray.
7. If beard is worn what color, and in what manner clean shaved.

Above to be filled in by Applicant.
Certified to as Correct.

W. MacLEOD, *Employer.*

Duplicate forwarded to Gen. Superintendent Sept. 25, 1913.
J. L. BOOMER, *Supt.*

Endorsed: Amended Answer. Filed in the District Court Sept. 9, 1916.

12 (*Amended Complaint.*)

Now comes the Plaintiff and for his Amended Complaint in the above entitled action, alleges and shows to this Court:

1st. That the defendant now is and at all times herein alleged has

been a railway corporation organized and existing under the laws of the Dominion of Canada, and that as such Defendant has been at all times herein mentioned operating a line of railroad running into and through Humboldt, in the Province of Saskatchewan, Canada, and that said line of railroad extends into the State of Minnesota, in the United States of America.

2nd. That on or about the 29th day of November, 1913, and for some time prior thereto, this Plaintiff was in the employ of Defendant as brakeman and switchman, and in the course of his employment was compelled to and did work in and about said Railway Yards in said Humboldt, Saskatchewan, Canada, and that among other duties, it was the duty of Plaintiff, to assist in the switching of freight cars, and assist in general switching operations in the Railway Yards of Defendant in said Humboldt, and that in the performance of said work it became and was necessary for Plaintiff to be upon the end of one of the railway freight cars of said Defendant, situate in said Yards in said Humboldt.

3rd. That on or about the said 29th day of November, 1913, and while Plaintiff was so engaged as a servant and employee of said Defendant, and while he was in the preformance of his duty as a brakeman and switchman for said Defendant he was working upon one of the Railway freight cars of said Defendant and was standing on one end thereof and that he was thrown therefrom and severely injured by reason of the negligence of said Defendant, as hereinafter alleged.

4th. That at all times herein mentioned the rights of the Plaintiff herein were governed by the Common Law, in force in the Province of Saskatchewan, in the Dominion of Canada, except as hereinafter set forth, and that under and by virtue of the Common Law in force in said Province at the time of the injury to the plaintiff, as hereinafter alleged, it was the Common Law duty of defendant to use reasonable care to furnish to its servant, this plaintiff, a reasonable safe place in which to perform the work assigned to him; and that it was the duty of said defendant to use reasonable care to furnish plaintiff reasonably safe appliances and material with which to do the work assigned to him, and that it was the duty of defendant to use and

13 adopt a safe and reasonably proper method and system of carrying on its work so as not to injure its employees, and especially this plaintiff.

That at the time of injury to plaintiff there was in force and effect in the Province of Saskatchewan, in the Dominion of Canada, a certain Statute, under and by virtue of which the doctrine of Common Employment of Fellow Servants as a defense under the Common Law was abrogated and changed and that said Statute is known as "The Workman's Compensation Ordinance," which said Statute was duly enacted in said Province and assented to on May 4th, 1900, and which Statute is known as Saskatchewan Statute, 1900, Chapter 13, and that said Statute reads as follows:

"1. This Ordinance may be known and cited as "The Workman's Compensation Ordinance."

2. It shall not be a good defence in law to any action against an employer or the successor or legal representative of an employer for

damages for the injury or death of an employee of such employer that such injury or death resulted from the negligence of an employee engaged in a common employment with the injured employee any contract or agreement to the contrary notwithstanding."

5th. That said defendant negligently, recklessly and carelessly failed to use ordinary care to provide a reasonably safe place for Plaintiff to work in and neglected to use reasonable care to have the cars on and about which Plaintiff was working in a reasonably safe condition for such purpose; that on said day when plaintiff was working upon the said railway freight car of said defendant in said Yards in Humboldt, Saskatchewan, the said defendant negligently, recklessly and carelessly failed and neglected to have on said car any proper grabiron or handhold for the use and assistance of plaintiff while working upon and standing upon said car, and that said defendant negligently, recklessly and carelessly failed to have or provide any proper or sufficient foothold for plaintiff to stand on while working on said car, and that at said time plaintiff was, while in the performance of his duty, standing on one end of the car with his feet resting upon a certain horseshoe shaped piece of iron at the bottom of the brake-beam at the end of said car, and that in the performance of plaintiff's duty it was necessary for him to be upon the end of said car but that said defendant negligently, recklessly, and carelessly failed to furnish any proper foothold for plaintiff to stand on
14 and that he was obliged to stand upon said iron at the bottom of said brake-beam and that said iron was at said time insufficient and an improper and dangerous place for Plaintiff to stand, and it did not constitute and was not at said time a proper and safe foothold for the use of plaintiff as the employee of said defendant; that while plaintiff was so standing on said horse-shoe shaped piece of iron and while he was in the performance of his duty, and engaged in switching operations in the Railway Yards of said defendant in said Humboldt, Saskatchewan, there was a certain locomotive engine attached to, among others, the car upon which plaintiff was working, and that said defendant, its agents and servants, so negligently, recklessly and carelessly managed and controlled said locomotive and the machinery thereof, that the car upon which plaintiff was working was suddenly jolted and jerked with great force and violence and that plaintiff was at said time thrown from said car to the ground and that he sustained the severe injuries hereinafter alleged.

6th. That the injuries to plaintiff occurred by reason of the negligence of defendant in failing to use reasonable care to furnish plaintiff with a reasonably safe place in which to do the work assigned to him, and by reason of negligently failing to provide proper grab-irons or hand-holds on said car, and by reason of failing to provide a proper foothold and place for plaintiff to stand during his work upon said car, and by reason of the sudden and negligent jerking and jarring of said car, on which plaintiff was obliged to work.

7th. That by reason of the negligence of defendant, as aforesaid, plaintiff was severely and permanently injured in this that plaintiff

was thrown to the ground and onto and against the wheel of said car and that as a result his left arm and hand were severely and permanently injured; that plaintiff's left hand was caught in and about the wheels and machinery of said car, and severely crushed and injured between the wrist and knuckle thereof and that said plaintiff has permanently lost the use of his left arm; that plaintiff, as the result of said injuries, has sustained a severe and permanent shock to his nervous system, and that as the result of said injuries plaintiff's general health has been and is greatly and permanently impaired and injured.

8th. That prior to the injuries of plaintiff he was an able-bodied man and could and did earn approximately One Hundred Dollars ($100.00) per month, but that as the result of his injuries his earning capacity has been practically destroyed and that plaintiff is incapacitated for doing any manual work.

9th. That by reason of all the facts hereinbefore alleged, plaintiff has been injured to his damage in the sum of Twenty Thousand ($20,000.00) Dollars.

Wherefore Plaintiff demands judgment against said Defendant for the sum of Twenty-Thousand ($20,000.00) Dollars, together with his costs and disbursements herein.

Dated this 29th day of August, 1916.

DAVIS & MICHEL,
Plaintiff's Attorneys, Marshall, Minnesota.

Endorsed: Due and personal Service of the within Amended Complaint admitted this 2nd day of Sept. 1916. Hector Baxter, Attorney for Defendant.

Endorsed: Filed in the District Court on Sept. 13, 1916.

Reply.

Now comes the above named plaintiff and for his reply to the amended answer of the Defendant in the above entitled action alleges and shows to this Court:

1st. Plaintiff denies each and every allegation and each and every part thereof in said complaint contained except as the same admits the allegations of Plaintiff's complaint.

2nd. Plaintiff expressly alleges and shows to this Court that that certain statute mentioned in paragraph 3 of Defendant's amended answer, known as "An Act to Amend and Consolidate the Law Respecting Railways," being Chapter 58 3 Edw. VII and all the provisions therein [con*a*tined] have no application and does not result in any limitation of the right of this Plaintiff to commence or maintain this action and Plaintiff alleges that said statute does not apply to any negligent acts or omissions resulting in injury to employees of railway companies in said Province of Saskatchewan in the Dominion of Canada, and Plaintiff further alleges that that portion of said statute known as Subdivision 306, and which provides that an action

shall be commenced within one year next after the time when such supposed damage is sustained, and not thereafter, is a statute of limitation and that the same does not apply to actions brought in the State of Minnesota, in the United States of America, and that this action is governed by the statutes and laws of the State of Minnesota.

16 3rd. Plaintiff further alleges and shows to this Court that Chapter 9 of the Laws of Saskatchewan, for the years 1910 and 1911, entitled "An Act Respecting Compensation to Workmen for Injuries Suffered in the Course of their Employment" and set forth in paragraph 7th of the Defendant's Amended Answer does not apply to the facts as set forth in Plaintiff's Complaint, and Plaintiff admits that said statute contains the provisions set forth in Defendant's Amended Answer but Plaintiff expressly alleges that Section 8 of said Statute is in words as follows: "If within the time limited for bringing an action under this Act an action is brought to recover damages independently of this Act for injury caused by an accident, and it is determined in such action that the injury is one for which the employer is not liable in such action but that he would have been liable to pay compensation under this Act the action shall be dismissed; but the Court in which the action is tried shall, if the Plaintiff so chooses, proceed to assess such compensation and to adjudge the same to the Plaintiff and shall be at liberty to deduct from such compensation all or part of the costs which in its judgment have been caused by the Plaintiff bringing his action independently of this Act instead of proceeding under the same."

4th. That by reason of the above Statutes and because of the fact that said action was commenced in the State of Minnesota, in the United States of America, the only statute of limitations applicable to the facts hereinbefore alleged is the Statute of Limitations of the State of Minnesota.

Wherefore, Plaintiff demands judgment as prayed for in said Complaint.

Dated this 13th day of September, 1916.

DAVIS & MICHEL,
Plaintiff's Attorneys, Marshall, Minnesota.

Endorsed: Filed in the District Court on Sept. 19, 1916.

(*Amended Amended Answer to Amended Complaint.*)

The defendant for its amended answer to the amended complaint herein:

I.

Admits paragraph I thereof.

II.

Admits that on or about the 29th day of November, 1913, plaintiff was employed by this defendant as a freight train brakeman and switchman.

17 III.

Further answering the complaint and as a separate defence, defendant alleged that the cause of action set forth in the complaint did not accrue within one year prior to the time when this action was brot, and that this action was not brot within one year after the happening of the accident or negligent acts complained of and as set forth in said complaint, and the said action is barred by the express terms and provisions of the Laws and Statutes of the Dominion of Canada as hereinafter set forth. That heretofore and on or about the 24th day of October 1903, there was duly enacted into Law a Statute of Canada being Chapter 58 3 Edw. VII entitled "An Act to Amend and Consolidate the Law Respecting Railways" (assented to 24th of October, 1903), containing provisions following, to-wit:

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(21) "Railway" means any railway which the company has authority to construct or operate, and includes all branches, sidings, stations, depots, wharfs, rolling stock, equipment, stores, property real or personal and works connected therewith, and also any railway bridge, tunnel, or other structure which the company is authorized to construct.

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That the said Chapter 58 as the same is printed and published in the Statutes of Canada 3 Edw. VII 1903 Vol. 1, being Chapter 37, of the Revised Statutes of Canada 1906, entitled "An Act Respecting Railways" *are* hereby expressly made a part of this Answer as if fully set out and incorporated herein. That the above quoted provisions of the Statutes have been ever since the passage thereof, and still are, in full force and effect, and the Law of the Dominion of Canada. That said provisions were in full force and effect and the law of the Dominion of Canada at all the times alleged in the complaint herein.

IV.

Further answering the amended complaint herein defendant alleges that on or about the 29th day of November 1913, the said Gus Eggen plaintiff herein, entered into a contract of employment with this defendant wherein, and whereby he agreed that before commencing to work for this defendant, he would familiarize himself with the rules of the company, and that he would comply strictly with all of its rules and regulations, and in no case or under any circumstances would he acquiesce in or consent to any violation of said rules. That said contract of employment contained rules and provisions for caution as to the personal safety of employees, which rules were well known to the plaintiff herein at the time of the accident described in the complaint. That plaintiff herein, by the aforesaid contract, agreed in writing to comply with the requirements of said rules; and a copy of said contract with the said rules therein contained, is hereto attached, and made a part of this answer as if set out in full, and is marked "Exhibit A."

V.

That all the rules and regulations respecting the employment and conduct of employees of this defendant company have been made under and pursuant to the laws of the Dominion of Canada in that respect made and provided. That heretofore, and on or about the 24th day of October 1903 there was duly enacted into Law a Statute of Canada being Chapter 58 3 Edw. VII entitled "An Act to Amend and Consolidate the Law respecting Railways" (assented to 24th of October, 1903), containing provisions following, to-wit:

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:

I.—Short Title.

I. This act may be cited as the Railway Act, 1903.

19 IV. Commission.

Name, Constitution, Duties, etc.

8. The railway Commission of the Privy Council is hereby abolished, and, in lieu thereof, there shall be a Commission, to be known as the "Board of Railway Commissioners for Canada, consisting of three members who shall be appointed by the Governor in Council, at any time after the passing of this Act, and from time to time as vacancies occur. Such Commission shall be a Court of Record, and have an official seal which shall be judicially noticed."

That the said Chapter 58 as the same is printed and published in the Statute- of Canada 3 Edw. VII 1903, Vol. 1, and Chapter 37 of Revised Statute- of Canada 1906, entitled "An Act Respecting Railways," are hereby expressly made a part of this answer as if fully set out and incorporated herein. That the above quoted provision of the Statute has been, ever since the passage thereof, and still is, in full force and effect, and the law of the Dominion of Canada. That pursuant to and under the authority of [saud] Statute there was duly created and organized the Board of Railway Commissioners for Canada therein provided for, which said Board has ever since existed and still exists under the Authority of said Law, and all Laws of Canada passed subsequently thereto. That there was duly enacted into Law, a provision concerning or respecting by-laws, rules and regulations made by railroad companies, which is Section 307 of Chapter 37, of the Revised Statute- of Canada 1906 and which reads as follows:

By-Laws, Rules, and Regulations.

307. The Company may, subject to the provisions and restrictions in this and in the special act contained, make by-laws, rules [ar] regulations respecting,—

(*g*) The employment and conduct of the officers and employees of the Company;

That the above quoted provision of the Statute has been ever since the passage thereof, and still is, in full force and effect, and the Law of the Dominion of Canada. That under and pursuant to the authority of said provision, the hereinbefore mentioned rules, were made and promulgated by this defendant company, and the same were approved by order of the Board of Railway Commissioners for Canada on the 12th day of July 1909; that among said rules so made, promulgated and approved were the rules contained in said Exhibit "A" aforesaid.

20 VI.

Further answering the amended complaint herein, defendant alleges that the injuries complained of by plaintiff, were caused, by

and due to his own carelessness and negligence, and not by reason of any act or ommission on the part of this defendant, its agents, servants or employees. That said injuries complained of by plaintiff were caused by and due to risks and hazards which the plaintiff then and there voluntarily and knowingly assumed. That said plaintiff voluntarily and knowingly assumed the risks of defendant's negligence, if any, in this, that he, the said plaintiff, knowingly and wilfully violated the rules of this company hereinbefore set forth, in jumping on and standing on the brake shaft as alleged in his complaint.

VII.

Further answering the complaint and as a separate defense alleges that heretofore and on or about the 23rd day of March, 1911, there was duly enacted into law a statute of the Province of Saskatchewan, being Chapter 9 of the Laws of Saskatchewan for 1910 and 1911 entitled "An Act Respecting Compensation to Workmen for Injuries Suffered in the Course of their Employment", assented to March 23, 1911, containing provisions following, to-wit:

His Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan enacts as follows:

Short Title.

1. This Act may be cited as "The Workmen's Compensation Act."

Application of Act.

2. This Act shall apply only to employment by the principal on or in or about a railway, factory, mine, quarry or engineering work; or in or about any building which is either being constructed or repaired or being demolished.

Interpretation.

3. In this Act unless the context otherwise requires the expression:

1. "Railway" means a road used by a private person or public company on which carriages run over metal rails and shall include railways or tramways worked by the force and power of steam, electricity or of the atmosphere or by mechanical power or any combination of them.

21 6. "Principal" in the case of a railway means the person or company owning or operating the railway; in the case of a factory, mine or quarry means the owner, occupier or operator thereof; in the case of an engineering work or other work specified in this act means the person undertaking the construction, alteration, repair or demolition;

11. An action under this Act shall not be maintainable unless it

is commenced within six months from the occurrence of the accident causing the injury or in case of death within six months from the time of death.

15. The amount of compensation recoverable under this Act shall not exceed either such sum as is found to be equivalent to the estimated earnings during the three years preceding the injury of a person in the same grade employed during those three years in a like employment or the sum of $1,800 whichever is larger but shall not exceed in any case the sum of $2,000.

20. This Act shall come into force on the first day of November 1911.

That the above quoted provision- of the Statutes have been ever since the passage thereof, and still are, in full force and effect, and the law of the Province of Saskatchewan. That said provisions were in full force and effect and the law of the Province of Saskatchewan, at all the times alleged in the complaint herein.

That the cause of action set forth in the complaint did not accrue within six months prior to the time when this action was brought, and that this action was not brought within six months after the happening of the accident or negligent acts complained of and as set forth in said complaint, and the said action is barred by the express terms and provisions of the laws of Saskatchewan as hereinbefore set forth.

VIII.

Alleges that the plaintiff Gus Eggen, is a citizen of the State of South Dakota; that the defendant is a citizen and subject of the Dominion of Canada; that the cause of action arose outside of this state; that the cause of action is barred by the laws of the Dominion of Canada and the Province of Saskatchewan and that under the laws of the State of Minnesota, by reason of all the facts aforesaid and herein pleaded in this Amended [*amended*] answer this action cannot be commenced or maintained.

22 Wherefore, defendant prays that this action be dismissed, that plaintiff take nothing thereby, and that it have its costs and disbursements herein.

HECTOR BAXTER AND
H. SEGER SLIFER,
Attorneys for Defendant,
916 *Lumber Exchange, Minneapolis, Minnesota.*

EXHIBIT A.

Form 1.

Canadian Northern.

Application for Employment as Switchman.

The Superintendent will require all persons, before entering the service of this company, to answer the following interrogatories in their own handwriting. Blanks must be filled up and signed in triplicate, two copies being forwarded to the Superintendent with any letters of recommendation which applicant may have, of which a record will be made, and all letters other than those of Canadian Northern issue returned. Letters of recommendation or clearance issued by the Canadian Northern Railway, may be held by the Superintendent who will, if requested to do so, make notation of all previous service on the clearance which is issued from his office. The applicant will keep the third copy of this personal record for future reference. Superintendents will forward to General Superintendent, Winnipeg, one of the copies sent them.

1. Name in full Gus Eggen.
2. Birthplace Vienna Province South Dakota.
3. Age 24 years last birthday.
4. Nationality Norwegian.
5. Married or single single.
6. If married, where does your family reside? No. — St. ——. Town or City —— Province ——.
7. If single, where does your family or nearest relative reside, and what is his (or her) name? Mother Mrs. H. Eggen No. — St. —— Town or City Vienna Province So. Dakota.

23 8. How many years' experience in Railroad service? 3 years.

9. Ever injured; if so, on what road and to what extent? No.
10. In what business before entering Railroad business? Labourer At what place? Clark Province South Dakota.
11. Name All Roads on which you have been employed:

Railroad.	Name of superintendent.	Address.	In what capacity.	In what year.
G. N.	J. W. McKinnon.	Wilmar, Minn.	Brakeman.	Oct. 19, 1910, Apr. 13, 1912.
C. P. R.	W. J. Uren.	Calgary, Alta.	Switchman.	July 2, 1912. May 13, 1912.

12. If you have been employed before on any Division of this Road, or Branches, state which one, when, and in what capacity? No.
13. On what Road last employed? Can. Pacific.
Cause of leaving? Dismissed unknown cause.

14. Number of letters of recommendation enclosed none.

15. How have you been occupied since your last employment terminated? Labouring at Edmonton, Crown Paving Co. Mr. Levoy.

16. Have you read, and do you understand the following Rule of the Canadian Northern Railway Company? Yes.

Caution as to Personal Safety.

17. Special care must be exercised by all persons coupling cars as the coupling apparatus of cars or engines cannot be uniform in style, size or strength, and is liable to be broken, and as for various causes it is dangerous to expose between the cars the hands, arms or persons of those engaged in coupling, all employees are enjoined before coupling cars to examine so as to know the kind and condition of the coupling apparatus, draw heads and bars. Under no circumstances in coupling cars or doing any other work is the hand or foot to be placed in a dangerous position when the work could be done by the use of a stick, even although the latter process is much slower. Stepping upon the front and rear of approaching engines, going between cars while the same are in motion, and similar imprudent actions are strictly prohibited. Employees are
required to see for themselves that the machinery, tools, cars,
24 engines or implements which they are expected to use are
in proper condition for the service required, and if not, to put the same in proper condition before using them. If a defective or dangerous condition is discovered or known to exist in the construction of tracks, structures, equipment, appliances, or tools or other property, whereby hazard exists or casualty might result, immediate and full report must be telegraphed to the head of the department and to the superintendent.

Over.

18. Do you agree to comply with the requirements of the foregoing rule in case you enter into the Company's employ? Yes.

19. You are notified that if you, or any other employee, chooses to violate the requirements of any other rules contained in the Book of Rules of the Canadian Northern Railway Company, you do so solely at your own risk. The Company expects you and all other employees to comply strictly with all its rules and regulations, and does not, and will not, in any case acquiesce in or consent to any violation of them. Do you understand that all violations of the Rules of the Company by you or any other employee of the Company, whether habitual or otherwise, are not consented to or acquiesced in by the Company? Yes.

20. Are you related to any officer or employee of this Company? If so, state to whom, and how related: No.

21. I hereby agree that before commencing to work for the Company, I will familiarize myself with the location and condition of the tracks, ways, machinery and plant of the Company, and I

also agree to familiarize myself with all obstructions that there may be along the line of the Company's railway.

22. I am in receipt of a copy of the rules of the Canadian Northern Railway Company, and undertake to familiarize myself with and abide by the said rules. Yes.

This application made by GUS EGGEN,
(Sign your name in full, no initials.)
Located at *Edmonton, Alta.*

Witness.
W. MacLEOD,
G. Y. M.

Date Sept. 19, 1913.

25 No. 14275.

Personal Record.

Name G. Eggen.
Occupation Switchman.
Date of Application Sept. 19, 1913.
Date Employed Sept. 22, 1913.
Division Westn. 3rd.

Above to be filled in by Division Superintendent.

Description of Person Named Within.

1. Height 5 ft. 10½.
2. Form Medium.
3. Weight 155.
4. Complexion Dark.
5. Color of Hair Dark Brown.
6. Color of Eyes Gray.
7. If beard is worn what color, and in what manner Clean Shaved.

Above to be filled in by applicant.

Certified to as Correct.

W. MacLEOD, *Employer.*

Duplicate forwarded to Gen. Superintendent Sept. 25, 1913.
J. L. BOOMER, *Supt.*

Endorsed: Amended, Amended Answer to Amended Complaint. Filed in the U. S. District Court, Oct. 3, 1913.

United States District Court, District of Minnesota, Second Division.

Term Minutes, April Term, A. D. 1917.

Tuesday Morning,
April 24, 1917.

Court was duly opened and proclamation made:

Present: Honorable Wilbur F. Booth, Judge, Charles L. Spencer, Clerk.

26 (*Jury Impaneled; Trial April* 24, 1917.)

And now the parties to the above entitled action appear in Court this day by their respective attorneys, Davis & Michel, Esqs., appearing as attorneys for the plaintiff, and A. Seger Slifer, Esq., and Hextor Baxter, Esq., appearing as attorneys for the defendant. Whereupon a jury having been called, comes as follows, to-wit:—George H. Goodspeed, C. C. Eaton, Fred Radloff, A. A. Mayor, B. M. Loeffler, Charles Bowdrye, Guste Dante, C. H. Wessel, Rex Bingham, H. D. Ayers, John W. Burke, F. H. Wiggins, being twelve (12) free and lawful men who were duly empaneled as a jury sworn to try the issues joined herein.

Mr. Davis opens the case to the Court and jury on the part of the plaintiff.

John Marshall is sworn, is examined and testified as a witness on part of the plaintiff.

Gus Eggen is sworn, is examined and testifies as a witness in his own behalf.

Howard Kerns is sworn, is examined and testifies as a witness on part of the plaintiff.

And here the plaintiff rests.

Mr. Slifer opens the case to the Court and jury on the part of the defendant.

Gus Eggen, plaintiff, recalled, is examined and testifies further on cross-examination.

John Marshall, recalled, is examined and further testifies as a witness on part of the defendant.

Wm. Turner is sworn, is examined and testifies as a witness on part of the defendant.

T. A. Musgrove is sworn, is examined and testifies as a witness on part of the defendant.

And the further trial of this action is continued until 9:30 o'clock A. M. of the following day.

A True Record.
Attest:
CHARLES L. SPENCER, *Clerk*,
By CARL E. BREDESON, *Deputy*.

27 United States District Court, District of Minnesota, Second Division.

Term Minutes, April Term, A. D. 1917.

Wednesday Morning,

April 25, 1917.

Court opened pursuant to Adjournment.

Present: Honorable Wilbur F. Booth, Judge. Charles L. Spencer, Clerk. Carl E. Bredeson, Deputy Clerk.

(*Verdict and Judgment April 25, 1917, Proceedings Stayed for Ninety Days Except Taxation of Costs, and Entry of Judgment.*)

No. 82.

GUS EGGEN

vs.

CANADIAN NORTHERN RAILWAY COMPANY.

And now again the parties to the above entitled action appear in Court this day with their same attorneys, respectively, as on the preceding day, and the further trial of said action to the Court and jury proceeds as follows:

S. R. Page is sworn, is examined and testifies as a witness on part of the defendant.

William Johnson is sworn, is examined and testifies as a witness on part of the defendant.

And here the defendant rests its case; and the testimony is closed.

And here Mr. Slifer, on behalf of the defendant moves the Court that the Jury be instructed to find a verdict in favor of the defendant on the ground that the Court has no jurisdic-ion and that the plaintiff was guilty of [contributary] negligence, Mr. Slifer argued said motion on part of the defendant and Mr. Michel argued said motion on behalf of the plaintiff. Whereupon the Court Ordered that said motion be and the same hereby is granted, and accordingly so instructs the Jury, who, thereupon, instanter and without leaving the box by their foreman find and return their verdict herein which is in the words and figures following, to-wit:

"We, the Jury in the above entitled cause, by direction of the Court, find for the Defendant.

Dated this 25th day of April, 1917.

B. M. LOEFFLER, *Foreman.*"

Whereupon, by reason of the foregoing verdict, it is by the
28 Court

Considered, Ordered and Adjudged that the plaintiff herein recover nothing in this his action, and that the defendant go hence without day, and

It is further by the Court ordered; that the Canadian Northern Railway Company, the defendant herein, do have and recover of and from Gus. Eggen, the plaintiff herein, its costs and disbursements of this action, to be taxed and that it have execution therefor.

Upon the agreement and consent of the attorneys for the respective parties hereto, it is by the Court Ordered that execution herein and all other proceedings, except the taxation of costs and the entry of judgment therefor be and the same hereby are stayed for the period of ninety days (90) from and after this date to enable the plaintiff to prepare and present a Bill of Exceptions and make a motion for a new trial.

A True Record.
Attest:

CHARLES L. SPENCER, *Clerk,*
By CARL E. BREDESON,
Deputy Clerk.

(*Stipulation as to Transcript of Record.*)

It is hereby stipulated by and between the Attorneys for the Plaintiff and for the defendant in the above entitled action that the portion of the Record hereinafter designated contains all of the facts necessary and essential to a determination of all questions involved in this action and raised and presented by the Assignments of Error and Writ of Error herein, and that a consideration of such portions of the record hereinafter designated is and will be sufficient for the determination of any of the questions involved in this cause upon the hearing thereof before the Circuit Court of Appeals.

That the portions of the Record designated as containing everything material to a determination of the question involved herein are as follows: Pages 1 and 2 of said Record, to the words "John Marshall" at the top of Page 2; Pages 17 to 24 of said Record, commencing with the testimony of Gus. Eggen on Page 17 and ending at the bottom of Page 24 with the words "Yes sir," just preceding the words, "at the time you were thrown to the ground, as you say," etc.; Pages 34 and 35, commencing with the words "a certain stipulation" on page 34, Page 36, beginning with cross-examination by Mr. Slifer and ending with "Yes, sir just before you had been working at Humboldt," all the testimony of the Plaintiff, Gus. Eggen appearing on Page 59; Pages 60 to 64 inclusive; Page 97, com-
29 mencing with the words "Testimony closed" to page 103 inclusive, together with all the exhibits mentioned and received in evidence in the portion of the proceedings herein above set forth.

It is further stipulated that the Clerk in making up the tran-

script for use in the hearing of this cause before the Circuit Court of Appeals, may omit therefrom all portions of the testimony except as are above set forth and designated.

TOM DAVIS &
ERNEST A. MICHEL,
Both of Marshall, Minnesota, Attorneys of Record for Plaintff in Error.
HECTOR BAXTER AND
H. SEGAR SLIFER,
Both of Minneapolis, Minnesota, Attorneys of Record for Defendant in Error.

(*Certificate of Judge to Portions of the Record Designated by Stipulation of Parties.*)

The annexed stipulation having been duly entered into by counsel for the respective parties hereto.

Now Therefore, I, Wilbur F. Booth, Judge of the United States District Court, do hereby certify and return that the portions of the record designated and set forth in the foregoing and annexed stipulation contain all of the testimony, objections, rulings, and exceptions made and taken and granted, and all proceedings considered by the trial court in the determination of the questions involved touching the statutes of Limitation of Canada and of the State of Minnesota.

WILBUR F. BOOTH,
Judge of the United States District Court.

Endorsed: Filed in the District Court on August 16, 1917.

(*Portions of Testimony Designated by Stipulation of Parties.*)

This case came on for trial at a regular term of the United States District Court held in the City of Mankato, Minnesota, Second Division, before Hon. Wilbur F. Booth, U. S. District Judge, and a jury, on the 24th day of April, 1912, in the Federal Building, Mankato, Minnesota.

Messrs. Davis & Michel appeared for the plaintiff.

30 Mr. Hector Baxter and H. Seger Slifer appeared for the defendant.

A jury is duly impaneled and sworn and the court then took a recess until two o'clock the same day at which time the case is proceeded with as follows:

The case on the part of the plaintiff is then opened to the jury by Mr. Davis.

GUS EGGEN sworn on his own behalf as the plaintiff testifies as follows:

Examination-in-chief.

By Mr. Davis:

Q. What is your name?
A. Gus Eggen.
Q. How old are you?
A. I am 28 years old.
Q. Where is your home now?
A. Vienna, South Dakota.
Q. Are you a citizen of the United States?
A. Yes sir.
Q. And a resident and citizen of the state of South Dakota?
A. Yes sir.
Q. Your home is there now in Vienna?
A. Yes sir.
Q. And has been for several years?
A. Yes sir.
Q. For how long?
A. About four or five years.
Q. That has been your home for the past four or five years? Has it?
A. Yes sir.
Q. Where were you born?
A. Vienna, South Dakota.
Q. And that is where you are now?
A. Yes sir.
Q. And that has been your home ever since?
A. Yes sir.
Q. Now, in the fall of 1913 were you employed by the Canadian Northern Railway Company as a switchman?
A. Yes sir.
Q. Employed in their yard at Humboldt, Saskatchewan, Canada?
A. Yes sir.
Q. How long had you been employed there, in those yards previous to this accident of your-?
A. I was hired, I think, about the 24th of September, 1913, at Edmonton, Canada.
Q. And you worked at Edmonton for some time?
A. Yes sir.
Q. Then you went from Edmonton to Humboldt, Saskatchewan, did you?
A. Yes sir.
Q. How long had you been at Humboldt, Saskatchewan before you sustained your injury?
31 A. I think that was my sixth night there.
Q. That was the sixth night you were there?
A. Yes sir.
Q. When you were injured?
A. Yes sir.
Q. Where did you work at Humboldt, Saskatchewan?

A. In the yards.

Q. How long did you work there, I mean to say, what were your hours in working there?

A. We commenced at seven o'clock in the evening until about oh, we had about fifteen hour shift.

Q. You commenced about seven o'clock in the evening?

A. Yes sir.

Q. And worked how long?

A. We worked until about ten o'clock the next morning.

— ——.

A. Yes sir, until about ten o'clock the next morning.

Q. That was your shift?

A. Yes sir.

Q. Previous to your working in Saskatchewan I understood you to say that you had worked for the Great Northern?

A. Yes sir, I hired with the Great Northern in 1910.

Q. What did you do for that company?

A. I was a brakeman then, and I worked in the yards at Wilmar and worked there for some time, and then I quit and went to Canada. I was in Canada about three months and then hired to the Canadian Pacific and worked there about nine months and then I quit and resigned and I went home for a couple of months and then came back to Canada and hired with the Canadian Northern about six days before I was hurt.

Q. Then your first work was at Wilmar with the Great Northern?

A. Yes sir.

Q. How long were you with them?

A. From July 1st, 1912, to March 1913.

Q. Then what did you do?

A. Then I came home, until the latter part of September, 1913.

Q. And then you entered the employ of the defendant in this case, the Canadian Northern Railway Company?

A. Yes sir.

Q. Then, as I understand it, on the night in question you *you* were working there for the Canadian Northern Railway Company as switchman?

A. Yes sir.

Q. You were engaged as a switchman in switching operations shortly prior to this accident?

A. Yes sir.

Q. What act of switching were you engaged in just prior to this accident? What were you doing at that time?

32 A. Well, just a short time before that, we were coming in on the main line and we helped to switch on the main track and I think then they had some six tracks there. I went from the main line to this side track and they pulled the remainder of the cars there. I was not with the cars when they backed up but when they had backed up ready to go in on the main line, I was there, and then I got with my lantern on the *the* car ahead of this car that was at the tail end of the switch.

Q. What kind of car was that? Was it a box car or a gondola car?
A. It was a gondola car.
Q. What was the number of the car in question, do you remember?
A. Yes sir. It was 90591.
Q. They were backing up?
A. Yes sir.
Q. You say you got on the car just ahead of that gondola car? What kind of car was that?
A. It was a box car.
Q. You are sure of that?
A. Yes sir.
Q. What car was between the box car you were on as you were going west, that you were switching, from the side track onto the main track, what other cars were there there?
A. I think there was a box car or maybe another gondola car.
Q. What did you do with this car after you got on the box car? In what direction were you going when you got on there?
A. We were, on the main line going east after we crossed the line. After we crossed the main line I gave a stop signal, crossed over and got on the main line.
Q. You got on the box car?
A. Yes.
Q. Then the cars were on the main line?
A. Yes sir.
Q. Then what did you do with reference to switching?
A. I threw the switch and set it for the main line.
Q. After you set the switch for the main line what did you do?
A. That was to get the cars on the main line.
Q. That was the purpose of throwing the switch?
A. Yes sir.
Q. Now, after you threw the switch, tell the jury what you did.
A. I gave them the back-up signal, and as they approached me, I put my lantern in my left hand and ran it along my sleeve.
Q. Did you cross over the track to go over to the south side of the track?
A. Yes sir, I crossed the track to get to the south side of the track.
Q. Why did you do that?
33 A. Because of my experience as a switchman. We always work with the engineer on that side, that is, we always work on the engineer's side.
Q. Is it a part of your duty to give signals to the engineer?
A. Yes sir, it is.
Q. Is that one of the reasons why you crossed over the track and got on the south side?
A. Yes sir, so that I could signal him there.
Q. Then as the train backed west or this string of cars backed west, you say you got onto the gondola car?
A. Yes sir.
Q. Tell the jury how you got onto that gondola car and what

the condition of that car was with reference to hand-hold on the south side of the car, as they were going west, teli the jury what the condition of that car was.

A. It was a gondola car, what they call Hart Convertible. It was used mostly for gravel and coal purposes. It had a brake mast at one end, so that a person could go through and open the doors.

Q. What did you do?

A. I gave the engineer the signal as the car approached me and I put my foot on that chain. I had my lantern run up my sleeve so that I could grab the grab-iron and at the same time throw my weight upon it. I found no grab iron, and I reached for whatever I could get, and I changed my position from the chain over onto that horse shoe shaped rod that was down below.

Q. The base of the rod?

A. Yes sir, the base of the rod.

Q. Then what did you do when you couldn't get a hand hold?

A. I had my lantern in this hand, and when I couldn't get a hand hold I got hold of the brake wheel.

Q. That is the brake wheel on top of the rod?

A. Yes sir, the brake wheel on top of the rod.

Q. And your foot then was on that rod, on that horse-shoe?

A. Yes sir.

Q. While you were in that position, about how far east of that crossing were you that has been mentioned here when you first got onto this gondola car?

A. I think I was two or three hundred feet.

Q. And how far west of this crossing did you get before anything occurred to you?

A. Well, I should think about 400 feet.

Q. About 400 feet?

A. Yes sir.

34 Q. While you were riding on that car you may state to the jury whether or not there were any hand-holds or other things besides this wheel provided for a person to hold onto on that car.

A. No sir, there were not.

Q. Then as I understand you, the only thing you could hold onto would be this brake wheel, and there was nothing else that you could get hold of to pull yourself up by.

A. No sir, there was not.

Q. There was nothing else to hold onto on that side of the car?

A. No sir.

Q. When you got onto that car you said you were about 400 feet west of the crossing?

A. Yes sir.

Q. What caused you to fall off from there? Tell the jury what occurred there, in your own language.

A. There was a sudden jerk of the car.

Q. You say there was a sudden jerk of what?

A. The car was suddenly jerked and then I having no good foot

hold, just as the car jerked, the wheel turned round and the first thing I knew I lost my balance and I was caught and dragged until I got loose again.

Q. What kind of a jerk was it, as to being a heavy jerk or not?
A. It was a strong, heavy jerk.
Q. What kind of a jerk was it as to being hard or a slight jerk?
A. It was a hard jerk.
Q. Was it a hard jerk?
A. Yes sir.
Q. You may state in what way the car jerked?
A. It jerked both ways.
Q. Both ways.
A. Yes sir, it jerked east and then west.
Q. Then what happened after it jerked east and then jerked west, as *as* you say, jerked both ways. What did you do then? What happened then?
A. The wheel turned round with me.
Q. What wheel turned round with you?
A. The brake wheel.
Q. Turned in which direction?
A. The wheel turned round going as you might say, east.
Q. And then threw you to the ground.
A. Yes sir.

Mr. Slifer: That is objected to as leading.

Q. Were you thrown to the ground by the jerk at that time?
A. Yes sir

A certain stipulation is now offered in evidence by counsel for plaintiff, received without objection and read to the jury, as follows:

35 *Stipulation.*

It is stipulated by and between the attorneys for the respective parties to the above entitled action that under the Common Law of the Province of Saskatchewan, in the Dominion of Canada, at the time of the injury to the Plaintiff herein, that the common law duties of a master to a servant required the master to use reasonable care to furnish his servant a reasonably safe and proper place in which to do his work; required the master to use and have reasonably safe appliances and material with which to do the work assigned to the servant, and required the master to use a reasonably safe and proper system or method in carrying on its work, and required the master to generally exercise ordinary care for the protection of its servants.

It is further stipulated that in said Province of Saskatchewan at the time of the injury to Plaintiff herein, the doctrine of Common Employment, or the Fellow Servant [Doc*r*tine] has been abrogated by a statute of said Province of Saskatchewan and that under said statute the master is liable to a servant for injuries due to the negli-

gence of a fellow servant would not constitute a defense to an action by the servant against the master.

Dated this 21st day of February 1917.

DAVIS & MICHEL,
Attorneys for Plaintiff, Marshall, Minnesota.
HECTOR BAXTER AND
H. SEGER SLIFER,
Attorneys for Defendant, Minneapolis, Minnesota, Lumber Exchange.

Cross-examination.

By Mr. Slifer:

Q. You say that you were born in Vienna South Dakota?
A. Yes sir.
Q. You are a citizen of Vienna, South Dakota?
A. Yes sir.
Q. And you were a citizen of Vienna, South Dakota, at the time of this accident?
A. Yes sir.
Q. And you have been such ever since?
A. Yes sir.
Q. You are a resident now of Vienna, South Dakota?
[—.]
Q. And you were a resident of Vienna South Dakota at the time this suit was brought?
A. Yes sir.

36 GUS EGGEN recalled on his own behalf as the plaintiff testifies as follows:

Examined.

By Mr. Davis:

Q. You were injured on the 29th of November, 1913?
A. Yes sir.
Q. When did you leave Canada and come to the United States?
A. I think I left Winnipeg the last part of [——]
Q. Have you been in South Dakota or in the United States since that time?
A. Yes sir.
Q. All the time?
A. Yes sir.
Q. And never returned to Canada?
A. No sir.
Q. You have never been in Canada since?
A. No sir.
Q. But the United States has been your home ever since?
A. Yes sir.

Plaintiff rests.

(Testimony for Defendant.)

The case on the part of the defendant is now opened to the jury by Mr. Slifer.

Mr. Slifer: There has been a stipulation filed here relating to Chapter 37, Section 306, Laws of 1906, of Canada, respecting railways, and I will read same:

"All actions or suit- for indemnity or for any damages or injuries sustained——

Mr. Michel: I object to your reading the act at this time.

Mr. Slifer: The defendant then offers in evidence this Section 306 of Chapter 37 of the Laws of Canada, 1906, relating to railway companies in view of the stipulation of the parties.

Mr. Michel: The plaintiff objects to the reception of this statute in evidence, not on the ground that counsel is not authorized to introduce the statute in question because we have stipulated that the statute may be admitted if material; but plaintiff objects to this statute in question on the ground that it is [immeterial] because it it a statute of limitation and this action in question is [goverened] by the statute of limitations of the State of Minnesota and not of the Dominion of Canada, and we claim that all laws of the various provinces of the Dominion of Canada relating to limitations are not admissible in this case.

37 The Court: I will receive it subject to your objection, and you may argue that question later on.

Mr. Michel: I would like to add further to the objection that we raise objection to the reception of this section also as incompetent and irrelevant.

Mr. Slifer. The defendant further offers in evidence a decision of the Supreme Court of Canada in the case of Greer against the Canadian Pacific, found in the Canadian Supreme Court report 51, page 338. This decision being one which construes statute which I have just introduced.

Mr. Michel: We object to the reception of this also as immaterial, incompetent and irrelevant to any issue in the case, but not on the ground that the decision is not in fact a decision of that court.

The Court: I will make the same ruling and receive the exhibit subject to your objection, and hear you later.

Mr. Slifer: The defendant further offers in evidence a decision in the same case in the trial court in Ontario, being Vol. 31 of the Ontario Law Reports, page 419. The action of the trial court was upheld by the decision in the supreme court in the former case to which I have just referred.

Mr. Michel: The plaintiff makes the same objection to this as to the previous offer.

The Court: The same ruling.

Mr. Slifer: I now offer in evidence the report of the case of Peszeniczy vs. Canadian Northern, found on page 456 of Volume 5 of the Western Law Reporter. This decision goes to this same statute.

Mr. Michel: I make the same objection to this as I — to the other decision.

The Court: I will make the same ruling and hear you later, and it may be received in evidence.

Mr. Slifer: The defendant now further offers in evidence the Workman's Compensation Ordinance of Saskatchewan, being chapter 9 of the Laws of the Province of Saskatchewan for 1910 and 1911.

Mr. Michel: I object to this on the ground that it is immaterial, incompetent and irrelevant and also on the further ground that it is not conclusive of this case. Also on the further ground
38 that this statute is inconsistent with the statute of limitations in Section 306 of the Railway Acts heretobefore offered in evidence by counsel for defendant. The Railway Act provides for a limitation of one year and this provides for a limitation of six months. I also make the further objection that the term of limitation is an unreasonable limitation of the rights of the employees.

The Court: I will receive it subject to these objections and hear you later on when the other questions are argued.

Mr. Slifer: I will also offer in evidence subject to objection Sec. 306, chap. 37, of the railway act of Canada, relating to actions for damages, [limitations] etc.

The Court: I think you had better get the evidence all in and then take up the law questions all at once.

Said Sec. 306, chap. 37, of the railway act of Canada, is as follows:

"Action for Damages.

306. Limitation. All actions or suits for indemnity for any damages or injury sustained *for* reason of the construction or operation of the railway shall be commenced within one year next after the time when such supposed damage is sustained, or, if there is continuation of damage within one year next after the doing or committing of such damage ceases, and not afterwards.

2. Pleadings. In any such action or suit the defendants may plead the general issue, and may give this Act and the Special Act and the special matter in evidence *of* the trial, and may prove that the said damages or injury alleged were done in pursuance of and by the authority of this Act or of the Special Act.

3. Nothing in this section shall apply to any action brought against the company upon any breach of contract, express or implied, for or relating to the carriage of any traffic, or to any action against the company for damages under the following provisions of this Act, respecting tolls.

4. Company not relieved. No inspection had under this Act, and nothing in the Act contained, and nothing done or ordered or omitted to be done or ordered, under or by virtue of the provisions of this Act, shall relieve, or be construed to relieve, any company of or from or in anywise diminish or effect, any liability or re-
39 sponsibility resting upon it, under the laws in force in the province in which such liability or responsibility arises, either

towards His Majesty or toward any person, or the wife or husband, parent or child, executor or administrator, tutor or curator, heir or personal representative, of any person, for anything done or omitted to be done by such company, or for any wrongful act, neglect or default, misfeasance, malfeasance, or nonfeasance, of such company, 3 E. VII., c. 58, s. 242.

Testimony closed.

The Court: In reference to the effect of the statutes that were introduced subject to objection, do you desire, to take this matter up for argument at this time?

Mr. Davis: Yes, your Honor.

(Motion of Defendant for a Directed Verdict.)

Mr. Slifer: At this time we ask the Court to direct the jury to bring in a verdict in favor of the defendant, on the ground that the action is barred by the statutes of limitations both of the State of Minnesota and of the Dominion of Canada; and also upon the further ground that as a matter of law, the Plaintiff was guilty of contributory negligence.

Arguments in support of this motion are made by Mr. Slifer and by Mr. Baxter; and in opposition thereto by Mr. Michel.

After hearing arguments of counsel upon the motion, the court rendered the following decision, orally:

(Oral Decision of the Court on Defendant's Motion for a Directed Verdict.)

The Court: Generally speaking the statute of limitations of the forum is the one that governs the action. This action is one for personal injury and is a transitory action, and is governed by the laws of Minnesota as to the time when such action can be brought. Ordinarily the statute of limitations for bringing personal injury actions in Minnesota, as I understand it, is six years, although I think there has been some question whether or not it may be two years; But my understanding is that the Supreme Court has held that the six years statute of limitation applies. A further provision of the statute which may apply to this case is Section 4083 of the Revised Laws of 1905.

This Section 4083 reads as follows:

"When a cause of action has arisen outside of this state, and, by the laws of the place where it arose an action thereon is there barred by lapse of time, no such action shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued."

The first question to be taken up is whether this cause of action arose outside of the state; secondly, whether it is barred by the laws of the place where it arose; third, whether it is owned and has been

owned since it accrued by a citizen of this state. The record in the case shows conclusively that this cause of action arose in Canada, and as to the last question there is no controversy about that either. The plaintiff is not a citizen of this state, and never has been, but has at all times resided in and been a citizen of the State of South Dakota. The remaining question is whether this cause of action having arisen in Canada has been barred there by the lapse of time.

Section 306 of the Railway Act of Canada of 1906 reads as follows:

"All actions or suits for indemnity for any damages or injury sustained by reason of the construction or operation of the railway shall be commenced within one year next after the time when such supposed damage is sustained, or if there is continuation of damage, within one year next after the doing or committing of such damage ceases, and not afterwards."

That statute has been before the courts of Canada a number of times, and I judge from the reported cases, has caused some little trouble to the judges in that jurisdiction to determine just exactly what construction is the proper one to be placed upon that act. The latest case, at least the latest case to which my attention has been called, is to the effect that that section is a statute of limitation and that it applies not only to a cause of action arising under the statute, but also to causes of action arising under the common law; and that it is a statute applying throughout Canada, and overrides any local statute or enactment which might apply merely to some of the provinces in Canada. This seems to be held in the case of Peszeniczy against the Canadian Northern, 35 W. L. R. 551 by a majority of the judges composing the court, although there were two dissenting opinions. Other decisions are to the same effect. It seems to me, in view of these decisions, that the present case is one that would be barred and is barred by lapse of time in Canada where the action arose, and that the plaintiff at the present time could not
41 maintain his cause of action in the courts of Canada by reason of the lapse of time; and if this is so, then in my judgment, Section 4083 of the Minnesota Statute applies here, assuming that it is a valid statute.

This Section 4083 of the Statute of Minnesota has been before the courts of this state a number of times. I remember one case quite distinctly in which the statute was applied, Luce V. Clarke, which is found in the 49th Minnesota, page 356. That case has been followed and the statute applied in a number of subsequent cases, but as far as I know the [questio*j*] of the constitutionality of this statute has never been before the state court.

The question is an interesting one and to my mind is not free from doubt. There may, however, be a distinction between the rights of a litigant which are substantive, and the rights which are merely procedural. The latter may not come within the constitutional provision invoked by counsel for plaintiff.

If a citizen of Iowa comes into the State of Minnesota, it may be that the State of Minnesota cannot pass a statute which would prevent him from bringing an action. But it is quite a common thing for states to pass statutes that when a citizen of one state comes into

a sister state and brings action, he may be compelled to put up a bond for costs, whereas the citizen of the home state is under no such obligation. It is not as a general proposition true that citizens of every state have under all circumstances the exact rights of procedure that citizens of some other state may have. A citizen of the State of Illinois cannot come into the State of Minnesota and sue an Illinois Corporation in the Federal Court, unless he has some special grounds therefor. He cannot base jurisdiction on the ground of diversity of citizenship; whereas, a citizen of the State of Minnesota can sue an Illinois corporation in the Federal Courts of Minnesota basing jurisdiction on the ground of diversity of citizenship. So, I think there may be a distinction between substantive rights and rights that are merely those of procedure. It seems to me that this statute of limitation comes rather under the latter than under the former class. While the question is not free from doubt in my own mind, still I have the opinion and so hold that Section 4083 of the revised laws of Minnesota of 1905 is constitutional, that it applies to this cause of action, and that this action cannot now be maintained in this state.

Taking this view of the matter, I will not pass upon the other questions raised by the motion; as to contributory negligence
42 of the plaintiff and the assumption of risk. I will rest the case solely upon this one question; so that if the parties see fit to seek review, they will be in a position to have a short record before the Appellate Court.

Mr. Michel: There are two [decisions] in Canada which hold that *his* section applies only to acts of omission, and especially hold that an act of commission is not within the statute.

The Court: I think this same question was up and in one case it was held in Canada that this Section applies not only to acts of omission, but to acts of commission. Of course these decisions are binding upon the courts here, with certain exceptions, not now necessary to be stated. But ordinarily the home construction of a statute goes with the statute. So I think I shall have to hold that it applies to an act of omission as well as to an act of commission.

(Court's Charge to the Jury.)

Gentlemen of the Jury, the Court has seen fit to decide this case upon a matter of law. Questions of law are for the Court to decide, questions of fact are for the Jury to decide. The Court has come to the conclusion that this case is barred by the statute of limitations of Canada where the cause of action arose, and that under the statute of Minnesota, such cause of action cannot be maintained here, by this Plaintiff.

The Court has, accordiingly, granted the motion of the defendant for a directed verdict, and it will be necessary for your for-man to sign this verdict as a matter of form, and the Court will appoint a foreman of the Jury to sign the verdict. The Clerk has prepared a verdict and the foreman will step forward and sign it.

(EXHIBIT D.)

Stipulation as to the Duty of Master and Servant under the Common Law of Canada, etc.

It is stipulated by and between the attorneys for the respective parties to the above entitled action that under the Common Law of the Province of Saskatchewan, in the Dominion of Canada, at the time of the injury to the Plaintiff herein, that the common law duties of a master to a servant required the master to use reasonable care to furnish his servant a reasonably safe and proper place
43 in which to do his work; required the master to use and have reasonably safe appliances and material with which to do the work assigned to the servant, and required the master to use a reasonably safe and proper system or method in carrying on its work, and required the master to generally exercise ordinary [*case*] for the protection of its servants.

It is further stipulated that in said Province of Saskatchewan at the time of the injury to Plaintiff herein, the doctrine of Common Employment, or the Fellow Servant Doctrine had been abrogated by a statute of said Province of Saskatchewan and that under said Statute the master is liable to a servant *or* injuries due to the negligence of a fellow servant and the fact of Common Employment, or injury caused by a fellow servant would not constitute a de- [defence] to an action by the servant against the master.

Dated this 21st day of February, 1917.

DAVIS & MICHEL,
Attorneys for Plaintiff,
Marshall, Minnesota.
HECTOR BAXTER &
SEGER SLIFER,
Attorneys for Defendant,
Minneapolis, Minnesota,
Lumber Exchange.

Endorsed: Filed in the District Court on April 25, 1917.

(EXHIBIT 1.)

Statement of Gus Eggen, January 17, 1914, *of Accident in Humboldt Yard November* 29, 1913.

Statement of Accident in Which I Had My Left Hand Badly Smashed While Switching in Humboldt Yard on Night of 29th of November, 1913.

We were switching cars from main Line to elevator track on night of above date. I was standing on bracket of brake mast, west end of dump car, which was the fifth or sixth car from the engine, when I

slipped off and fell, but I cannot say whether my hand got
44 caught between brake mast and car, or if outer edge of wheel passed over my hand after I had fallen.

37.

Humboldt, January 17th, 1914.

GUS EGGEN.

Endorsed: Filed in the District Court on April 25, 1917.

Petition for and Order Allowing Writ of Error.

Now comes Gus Eggen, by Attorneys and respectfully shows to this Court,

That on the 25th day of April, 1917, the Court directed a verdict against your petitioner and in favor of Canadian Northern Railway Company, the above named Defendant, and upon said Verdict a final judgment was entered on the 25th day of April, A. D., 1917, against your petitioner, the above named Plaintiff.

Your petitioner feeling himself aggrieved by said Verdict and judgment entered thereon as aforesaid, herewith petitions the Court for an Order allowing him to prosecute a Writ of Error to the Circuit Court of Appeals of the United States for the Eighth Circuit under the laws of the United States in such case made and provided.

Wherefore, premises considered, your petitioner prays that a Writ of error do issue that an appeal in his behalf to the United States Circuit Court of Appeals aforesaid, sitting at St. Louis, Missouri, in said Circuit, for the correction of errors complained of and therein assigned, be allowed, and that an order be made fixing the amount of security to be given by Plaintiff in Error, conditioned as the law directs, and upon giving such bond as may be required that all further proceedings may be suspended until the determination of said Writ of Error by the Circuit Court of Appeals.

TOM DAVIS AND
ERNEST A. MICHEL,
Attorneys for Petitioner in Error,
Marshall, Minnesota.

Dated this 22nd day of May, 1917.

45 Writ of Error in the foregoing and within entitled case granted this 23rd day of May A. D., 1917, and Bond fixed at Two Hundred and Fifty Dollars ($250.00).

WILBUR F. BOOTH,
Judge of United States District Court,
District of Minnesota, Second Division.

Endorsed: Filed in the District Court on May 25, 1917.

Assignment of Errors.

Now comes Gus Eggen Plaintiff in Error in the above entitled cause, and in connection with his Petition for a Writ of Error in this case, assigns the following Errors, which Plaintiff in Error avers occurred at the trial thereof, and upon which he relies to reverse the judgment entered herein as appears of record.

1.

That the Court erred in granting the Motion of Defendant in Error to direct a verdict in favor of said Defendant in Error and against Plaintiff in Error on the ground that the right of recovery of the Plaintiff in Error was barred by the Statute of Limitations of the Province of Saskatchewan in the Dominion of Canada.

2.

That the Court erred in granting the Motion of Defendant in Error to direct a verdict in favor of Defendant in Error and against the Plaintiff in Error on the ground that Plaintiff's cause of action was barred by the Statute of Limitations in force in the Province of Saskatchewan in the Dominion of Canada, and on the further ground that under and by virtue of Section 7709 of the General Statutes of Minnesota, 1913, and being the same as Section 4083 of the Revised Laws of Minnesota, 1905, that the right of the Plaintiff in Error to commence and maintain his action in the State of Minnesota was barred under the Statute of the State of Minnesota by reason of and because of the fact that the Plaintiff in Error was not a resident of the State of Minnesota.

3.

The Court erred in overruling the Plaintiff's objection to the introduction in evidence of Section 303 of Chapter 37, of
46 the Laws of Canada, 1906, relating to Railway Companies, (Record Page 60.)

4.

The Court erred in overruling the objection of the Plaintiff to the introduction of evidence of the decisions of the Supreme Court of Canada, construing the Statute of Limitations of the Province of Saskatchewan, Dominion of Canada.

5.

The Court erred in overruling Plaintiff's objection to the reception of evidence of the Workman's Compensation Ordinance of Saskatchewan, being Chapter 9, of the Laws of the Province of Saskatchewan

for 1910, and 1911, on the ground that said Workman's Compensation Ordinance was immaterial, incompetent and irrelevant and inconsistent with the Statute of Limitations in Section 306 of the Railway Act of Canada, being Chapter 37, of the Laws of Canada, 1906, introduced in evidence by said Defendant and on the further ground that the Limitation of the rights of Employees.

6.

The Court erred in receiving in evidence Section 306, Chapter 37 of the Railway Act of Canada. (Record Pages 63 and 64).

7.

That the Court erred in giving force and effect to Section 7709 of the General Statutes of Minnesota for the year 1913, being the same as Section 4083 of the Revised Laws of Minnesota for the year 1905, and the Court erred in holding that the cause of action of the Plaintiff in Error was barred by the Statute of Limitations of the Province of Saskatchewan, Canada, because of the fact that Plaintiff in Error was not a resident of the State of Minnesota.

8.

That the Court erred in directing a verdict against the Plaintiff in Error, on the ground that he was not a citizen of the State of Minnesota, and that the Court erred in denying to Plaintiff in Error his constitutional rights to all privileges and immunities of citizens in the several states as provided by Article IV, Section 2, of the Constitution of the United States of America;

The Record in this case showing that the Plaintiff in Error was employed in the Railway Yards of the Defendant in Error,
47 in the City of Humboldt, in the Province of Saskatchewan, Canada, and that he was injured on the 29th day of November, 1913, (Record Page 18) and that this action was commenced by the Plaintiff in Error on the 15th day of Ortober, 1915) and that after Plaintiff in Error was injured he remained in Canada for a period of approximately six months and then returned to the State of South Dakota, in the United States of America. (Record page 59).

That the Plaintiff in Error has at all times been a resident of the State of South Dakota, in the United States of America, and has at no time been a resident of the Dominion of Canada.

That Plaintiff in Error when employed by Defendant in Error was injured by reason of the negligence of the Defendant in Error in failing to have proper foot-holds, hand-holds and grab irons on a certain freight car on and about which Plaintiff in Error was compelled and directed to work.

Wherefore, Plaintiff in Error prays that the judgment of said Court be reversed and that a new trial be granted Plaintiff in Error.

TOM DAVIS,
ERNEST A. MICHEL,
Both of Marshall, Minnesota,
Attorneys of Record for Plaintiff in Error.

Endorsed: Filed in the District Court on May 25, 1917.

Bond on Writ of Error.

Know All Men By These Presents, that we, Ernest A. Michel, as agent and attorney for Gus Eggen, as principal, and M. W. Horden and A. L. Rivard as sureties, are held and firmly bound unto the Defendant in Error, Canadian Northern Railway Company, in the full and just sum of Two Hundred and Fifty ($250.00) Dollars to be paid to the said Canadian Northern Railway Company, its attorneys, successors, administrators, executors or assigns, to which payment well and truly to be made we bind ourselves, our successors, assigns, executors and administrators, jointly and severally by these presents.

Signed this 22nd day of May, 1917.

Whereas, lately at a regular term of the District Court of the United States for the Second Division of Minnesota, sitting
48 at Mankato, Minnesota, in said District, a suit pending in said Court between Gus Eggen [*was*] Plaintiff, and Canadian Northern Railway Company, as Defendant, case Number 82 on the law docket of said Court, final judgment was rendered against the said Gus Eggen, declaring that by reason of the verdict in said action Plaintiff have and recover nothing of the Defendant, Canadian Northern Railway Company, and the said Gus Eggen has obtained a Writ of Error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment of the said Court in the aforesaid suit, and a citation directed to the Canadian Northern Railway Company, Defendant in Error, citing it to be and appear before the United States Circuit Court of Appeals for the Eighth Circuit to be holden at St. Louis, in the State of Missouri, according to law, within thirty days from the date hereof.

Now, the condition of the above obligation is such, that if the said Gus Eggen shall prosecute his Writ of Error to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

ERNEST A. MICHEL,
As Agent and Attorney for Gus Eggen.
M. W. HARDEN,
A. L. RIVARD.

Signed in presence of
K. C. HUMPHREY.
M. E. CLENDENNING.

STATE OF MINNESOTA,
County of Lyon, ss:

On this 22nd day of May A. D. 1917, before me, a Notary Public, within and for said County, personally appeared Ernest A. Michel and M. W. Harden and A. L. Rivard, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] M. E. CLENDENNING,
Notary Public, Lyon County, Minnesota.

My Commission expires Jan. 18-1922.

49 STATE OF MINNESOTA,
County of Lyon, ss:

M. W. Harden and A. L. Rivard being duly sworn say, each for himself, that he is one of the sureties within named; that he is a resident and freeholder of the State of Minnesota, and worth double the amount for which he justifies herein, above his debts and other liabilities, exclusive of his property exempt from execution.

M. W. HARDEN.

Amount of Justification, $500.00.

A. L. RIVARD.

Amount of Justification, $500.00.

Subscribed and sworn to before me this 22nd day of May, 1917.

[NOTARIAL SEAL.] M. E. CLENDENNING,
Notary Public within and for said County.

My commission expires Jan. 18-1922.

Foregoing bond and sureties thereon hereby approved this 23rd day of May, 1917.

WILBUR F. BOOTH,
Judge U. S. Dist. Court.

Endorsed: Filed in the District Court on May 25, 1917.

(*Writ of Error and Clerk's Return.*)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the District Court of the United States for the District of Minnesota, Second Division, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in said District Court, before you,

at the April Term, 1917, hereof, between Gus Eggen, Plaintiff, and Canadian Northern Railway Company, Defendant, a manifest error hath happened to the great damage of said Gus. Eggen, Plaintiff, as by his Complaint appears.

50 And, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this Writ, so that you have the said Record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, on or before the 24 day of July, 1917, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this 6th day of June in the year of our Lord One Thousand Nine Hundred and Seventeen.

Issued at my office in Mankato, Minnesota, with the seal of the United States District Court of Minnesota, and dated as aforesaid.

[Seal U. S. Dis. Court, Sec. Div., Dist. of Minnesota.]

CHARLES L. SPENCER,
Clerk of the United States District Court,
By CARL E. BREDESON, *Deputy.*

Allowed by
WILBUR F. BOOTH, *Judge.*

UNITED STATES OF AMERICA,
District of Minnesota, Second Division, ss:

In obedience to the command of the writ, I herewith transmit to the United States Circuit Court of Appeals, a duly cer-
51 tified transcript of the record and proceedings in the within entitled cause, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix the seal of the District Court of the United States for the District of Minnesota, Second Division.

[Seal U. S. Dis. Court, Sec. Div., Dist. of Minnesota.]

CHARLES L. SPENCER,
Clerk of the District Court of the United States of America for the District of Minnesota,
By MAMIE C. BREDESON, *Deputy.*

Election as to Printing of Transcript.

The undersigned, for and on behalf of the Plaintiff, Gus Eggen, in the above entitled action, hereby files his election to have the record or Writ of Error from the United States Circuit Court of Appeals for the Eighth Circuit, in said action, printed by the Clerk of said Circuit Court of Appeals, and you are hereby requested to make and forward to said Clerk of said Circuit Court of Appeals, with instructions to print the same, a transcript of the various papers named in the Præcipe for transcript on Writ of Error, in said action.

The foregoing election and direction are made pursuant to Rule B-1 of the rule- of said District Court in such behalf.

Dated this 4th day of June, 1917.

TOM DAVIS AND
ERNEST A. MICHEL,
Both of Marshall, Minnesota.
Attorneys of Record for Plaintiff in Error.

Endorsed: Filed in the District Court on June 16, 1917.

(*Citation and Admission of Service.*)

GUS EGGEN, Plaintiff in Error,

vs.

CANADIAN NORTHERN RAILWAY COMPANY, Defendant in Error.

United States of America to Canadian Northern Railway Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit,
52 at the City of St. Louis, Missouri, sixty days from and after the date this citation bears date, pursuant to a Writ of Error filed in the Clerk's office of the District Court of the United States for the Second Division of the District of Minnesota, wherein Gus Eggen is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said plaintiff in Error, as — said Writ of Error mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Wilbur F. Booth, Judge of the District Court this 25th day of May, A. D., 1917.

WILBUR F. BOOTH,
Judge of U. S. District Court.

Copy of Plaintiff's citation in the above entitled case in appeal to the Circuit Court of Appeals in said case is hereby admitted this 1st day of June 1917.

HECTOR BAXTER AND
H. SEGER SLIFER,
Attorneys for Defendant in Error,
Minneapolis, Minnesota.

Endorsed: Filed in the District Court on June 6, 1917.

(*Amended Præcipe for Transcript.*)

To Charles L. Spencer, Clerk *Clerk* of said Court.

SIR: In making a transcript of the record on return to Writ of Error from the United States Circuit Court of Appeals, Eighth Circuit, in the above entitled action you will please include copies of the following papers:

Answer; Amended Answer; Amended Complaint; Reply; Amended Amended Answer; Term Minute Entry including Verdict and Judgment; Stipulation as to Part of record to go in Return And Order Thereon; Part of Record, as per stipulation; Stipulation, Marked Exhibit "D."; Petition for and Order Allowing Writ of Error; Assignments of Error; Bond *in* Appeal; Original Cit-
53 tation; Original Writ of Error; Election as to Printing; Amended Præcipe for Record; Stipulation and Order extending time to file Return on Appeal.

Dated this 10 day of September, A. D., 1917.

DAVIS AND MICHEL.

Endorsed: Filed in the District Court on Sept. 11, 1917.

(*Stipulation Extending Time to September* 24, 1917, *in Which Transcript of Record May be Filed in the Circuit Court of Appeals.*)

It is hereby stipulated by and between the parties to the above entitled action that whereas the Honorable Wilbur F. Booth one of the Judges of the above named District Court and before whom said cause was tried is absent from the State of Minnesota, and whereas the transcript of testimony is in the possession of said Judge Wilbur F. Booth,

Now, therefore, it is stipulated that the time for the return of the record to the *Court* of the Circuit Court of Appeals at St. Louis be and the same is hereby extended for the period of sixty (60) days, and said record may be returned to said Clerk on or before the 24th day of September 1917.

DAVIS & MICHEL,
Attorneys for the Plaintiff in Error,
Marshall, Minnesota.
HECTOR BAXTER &
H. SEGER SLIFER,
Attorneys for the Defendant in Error, Minneapolis, Minnesota, Lumber Exchange.

Endorsed: Filed in the District Court on July 24, 1917.

(*Order, August* 17, 1917, *Extending Time Sixty Days from and After July* 24, 1917, *in Which to File Transcript of Record in the Circuit Court of Appeals.*)

For good cause shown it is by me the undersigned Judge who signed the Citation in the above entitled case

Ordered that the time within which said case may be docketed and the record thereof filed with the clerk of the United States Circuit Court of Appeals for the Eighth Circuit upon the writ of error therein be and the same hereby is enlarged for a period
54 of sixty days from and after the 24th day of July, 1917.

WILBUR F. BOOTH, *Judge.*

Endorsed: Filed in the District Court on August 17, 1917.

(*Clerk's Certificate to Transcript.*)

UNITED STATES OF AMERICA:

District Court of the United States, District of Minnesota, Second Division.

I, Charles L. Spencer, Clerk of said District Court, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Eighth Circuit, that the foregoing, consisting of 85 pages, numbered consecutively from 1 to 85 inclusive, is a true and complete transcript of the Records, Pleadings, Orders, Final Judgment on Verdict, and all other proceedings in said cause as per præcipe for Record filed in said cause, and of the whole thereof, as appears from the original records and files of said Court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of said Court, at Mankato, in the District of Minnesota, this 18th day of September, A. D., 1917.

[Seal U. S. District Court, Sec. Div., Dist. of Minn.]

CHARLES L. SPENCER, *Clerk,*
By MAMIE C. BREDESON, *Deputy.*

Filed Sep. 27, 1917.
E. E. KOCH, *Clerk.*

55 And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

(*Appearance of Counsel for Plaintiff in Error.*)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5030.

GUS EGGEN, Plaintiff in Error,

vs.

CANADIAN NORTHERN RAILWAY COMPANY.

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

TOM DAVIS AND
ERNEST A. MICHEL,
Both of Marshall, Minnesota,
Attorneys for Plaintiff in Error.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 27, 1917.

(*Appearance of Counsel for Defendant in Error.*)

The Clerk will enter my appearance as Counsel for the Defendant in Error.

HECTOR BAXTER,
H. SEGER SLIFER,
1036 *Lumber Exchange, Minneapolis, Minn.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 27, 1917.

56 (*Order of Submission.*)

December Term, 1917.

Thursday, January 17, 1918.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Ernest A. Michel for plaintiff in error, continued by Mr. H. Seger Slifer for defendant in error and concluded by Mr. Ernest A. Michel for plaintiff in error.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

57 (*Opinion.*)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5030, September Term, A. D. 1918.

GUS EGGEN, Plaintiff in Error,

vs.

CANADIAN NORTHERN RAILWAY COMPANY, Defendant in Error.

In Error to the District Court of the United States for the District of Minnesota.

Mr. Ernest A. Michel (Mr. Tom Davis was with him on the brief), for plaintiff in error.

Mr. H. Seger Slifer (Mr. Hector Baxter was with him on the brief), for defendant in error.

Before Hook, Carland, and Stone, Circuit Judges.

STONE, *Circuit Judge*, delivered the opinion of the Court:

Writ of error from directed verdict favoring defendant in a personal injury suit.

The errors assigned present questions of law. Plaintiff, a citizen of South Dakota, was injured on a Canadian railway. Slightly more than a year later he brought this action in Minnesota. The first inquiry is as to whether the Canadian or the Minnesota statute of limitation governs. The Canadian statute (Sec. 306, Chap. 37 of the Railway Act of Canada) which is here involved requires that suits such as this shall be brought within one year. This requirement is no part of the right to bring an action, but is purely a statute of limitation. Peszeniczny v. Canadian Northern Ry. Co., 35 Western Law Reporter 546, 11 Western Weekly Reports 546. Such char-
58 acter of statutes have no extra territorial force. Therefore, the Minnesota law, being that of the forum, governs.

Two sections of the Minnesota statutes (Gen. St. of Minn. 1913, Secs. 7701 and 7709) give rise to the final inquiry. Section 7701 is an ordinary statute of limitation of six years for personal injuries. Section 7709 is:

"When a cause of action has arisen outside of this state, and, by the laws of the place where it arose, an action thereon is there barred by lapse of time, no such action shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued."

The facts brings this case within Section 7709, so that if that section is valid this action cannot be brought. Plaintiff challenges that section as being violative of Section 2, Article 4 of the National Constitution, and of the Fourteenth Amendment thereto.

It is necessary to discuss only the former. That provision is, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

It has been wisely seen that this provision of the Constitution is of comprehensive scope (Ward v. Maryland, 12 Wall. 418, 430; Conner v. Elliott, 18 How. 591, 593), and of deep influence in moulding the Union into a compact nation (Blake v. McClung, 172 U. S. 239, 251; Paul v. Virginia, 8 Wall. 168, 180; Lemmon v. The People, 20 N. Y. 607). Therefore the courts have prudently refrained from attempting any hard and fast definition of its terms (Ward v. Maryland, 12 Wall. 418, 430; Conner v. Elliott, 18 How. 591, 593; McCready v. Virginia, 94 U. S. 391, 395; Blake v. McClung, 172 U. S. 239, 248); but there is no divergence of opinion from the view expressed in Cole v. Cunningham, 133 U. S. 107, 113, by Mr. Chief Justice Fuller, who said:

"The intention of Section 2 of Article 4 was to confer on the citizens of the several states a general citizenship, and to communicate all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances, and *this includes the right to institute actions*" (italics ours).

59 Which view was emphasized by Mr. Justice Moody in Chambers v. B. & O. R. R. Co., 207 U. S. 142, 148, 149, who said:

"The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each State to the citizens of all other States to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the States, but is granted and protected by the Federal Constitution."

* * *

"Any law by which privileges to begin actions in the courts are given to its own citizens and withheld from the citizens of other States is void, because in conflict with the supreme law of the land." Ward v. Maryland, 12 Wall. 418, 430; McCready v. Virginia, 94 U. S. 391, 395; Blake v. McClung, 172 U. S. 239, 249; Harris v. Balk, 198 U. S. 215, 223; Corfield v. Coryell, 4 Wash. C. C. 371, 380.

We regard Section 7709 as opposed to this constitutional requirement, as it has been expounded in the above decisions, and therefore void.

Defendant seeks to draw a distinction between the right to bring a suit and the continuing right to bring it. A discrimination in the right to bring a suit five years after it accrues is as much a substantial discrimination as one in bringing the suit originally. Any difference is of degree, not of kind. The case of Chemung Canal Bank v. Lowery, 93 U. S. 72, is based upon no such distinction and employs no such reasoning. That case was decided upon the ground that there was an equitable and just ground for the discrimination in a limitation statute. For over forty years this decision has been passed in silence by the Supreme Court without once being cited, that

we can discover, upon this constitutional point. The later decisions above cited seem opposed to the spirit of that decision. They recognize and emphasize the great importance of this provision of the fundamental law, and the necessity of carefully preserving it from the slightest infringement. This statute, like many other state laws resulting in discrimination between citizens of different states,
60 may have much to commend it, but such considerations have no place in constitutional tests, nor could they weigh against the paramount object of this constitutional provision, which aims at unified nationality as opposed to confederation.

The judgment is

Reversed.

Filed November 18, 1918.

HOOK, *Circuit Judge*, dissenting:

It is well settled that holding a legislative act contrary to the Constitution should be avoided if fairly possible. Even grave doubts should be resolved in favor of validity. United States v. Jin Fuey Moy, 241 U. S. 394, 401. There is no clearly defined line between the power of the states and the limitations of the National Constitution, on one side or the other of which all cases readily fall; and in many instances legislation near the border has been upheld upon consideration of reasonableness in view of the conditions upon which it operates. That course, while preserving the true essence of the Constitution, has imparted an elasticity essential to its permanence.

I do not think the Minnesota statute should be held repugnant to the Constitution. It proceeds upon the principle that in a general sense a liability, debt or obligation is due at the domicil of the obligee and that he who owes it should go there to discharge it. Upon default it is not primarily the duty of the obligee to hunt his debtor beyond the boundaries of his state; he may await his coming within the jurisdiction of its courts. These are considerations in which an obligee domiciled in another state does not participate, and provisions of many state statutes of limitation proceed upon a recognition of them. It is not enough to say there is discrimination. Some difference in legislative treatment is warranted by a difference in conditions. The privileges and immunities contemplated by the Constitution are those which are of a fundamental character. In the field of legal remedies alone state legislation contains many discriminations in favor of both resident debtors and resident creditors which no one would now seriously contend are invalid. For examples; permitting attachment against a non-resident debtor without
61 bond while requiring a bond in attachment against a resident; non-residence, of itself without more, as a ground for attachment of the owner's property; the running of a statute of limitations in favor of a resident debtor but not in favor of a non-resident one; requiring a bond of a non-resident creditor in bringing suit but dispensing with it if he is a resident. Blake v. McClung, 172 U. S. 240, 256; Central Loan & Trust Co. v. Campbell, 173 U. S. 84 (Equal

Protection Clause). In such cases residence or non-residence may and generally does imply citizenship or the lack of it.

The right of access to courts of justice is of the greatest importance, but in preserving the equal privileges of the citizens in the several states in respect of it the Constitution does not pick up all local procedural details. The statute of Minnesota does not deny non-residents the right to sue in its courts on causes of action arising elsewhere. It keeps its courts open to all as long as is allowed in the foreign jurisdiction where the cause of action arose, and then gives further time to those of Minnesota, and only those who have "owned the cause of action ever since it accrued."

None of the cases cited to overthrow the statute involved the question before us, and reliance is therefore placed on general language in the opinions. It has been held dangerous broadly to apply abstract definitions of the word "privileges," in the constitutional provision, to particular cases of legislation. Conner v. Elliott, 18 How. 591, 593. Perhaps the strongest of the quotations relied on is that from Chambers v. Railroad, 207 U. S. 142, but that case was not at all like the one here. It involved the constitutionality of an Ohio statute under which a right of action, created by the laws of another state in favor of the widow or personal representative of one whose death was caused by negligence, could be maintained in Ohio only when the deceased was an Ohio citizen; and the validity of the statute was sustained. The nearest approach to the case at bar is Chemung Canal Bank v. Lowery, 93 U. S. 72. Like the case here, it involved the validity of a state statute of limitations under the "privileges and immunities" clause of the Constitution. Concisely expressed the statute provided that if the plaintiff resided in the state, the time should not run while defendant was out of the state, but that it should run if both plaintiff and defendant resided out of the state.

62 In the consideration of the case residence was taken as synonymous with citizenship. It will be perceived that an exemption from the operation of the statute—from the running of the limitation—was accorded a resident creditor but not accorded a non-resident creditor, under precisely the same condition, to-wit, the non-residence of the debtor. The discrimination was held reasonable and the statute was sustained. The precise point in that case does not appear to have again arisen in the Supreme Court, but in Anglo-Am. Prov. Co. v. Davis, 191 U. S. 373, 375, in which the validity of a New York statute was sustained under the "full faith and credit" clause, the court said: "As to discrimination against non-residents, see Chemung Canal Bank v. Lowery, 93 U. S. 72." In Penfield v. Railroad, 134 U. S. 351, a New York statute of limitations quite like the one here was construed and held to bar a plaintiff who did not actually reside in the state. No point was made, however, upon its constitutionality.

Filed November 18, 1918.

63 (*Judgment.*)

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1918.

No. 5030.

Monday, November 18, 1918.

GUS EGGEN, Plaintiff in Error,

vs.

CANADIAN NORTHERN RAILWAY COMPANY.

In Error to the District Court of the United States for the District of Minnesota.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed with costs; and that Gus Eggen have and recover against the Canadian Northern Railway Company in the sum of — Dollars for his costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to grant a new trial.

November 18, 1918.

64 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Minnesota, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Gus Eggen was Plaintiff in Error and the Canadian Northern Railway Company was Defendant in Error, No. 5030, as full, true and complete as the originals of the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this eleventh day of January, A. D. 1919.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

65 United States Circuit Court of Appeals, Eighth Circuit.

No. 5030.

GUS EGGEN, Plaintiff in Error,
vs.
CANADIAN NORTHERN RAILWAY COMPANY, Defendant in Error.

Stipulation.

It is hereby stipulated and agreed, by and between the above named parties and their respective attorneys, that the transcript of the record in the above entitled cause heretofore certified by the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit and heretofore filed in the office of the Clerk of the Supreme Court of the United States in connection with the petition for writ of certiorari in said cause, shall be taken and accepted as the return to the writ of certiorari directed to the said United States Circuit Court of Appeals, issued in said cause by the Supreme Court of the United States under date of March 13, 1919.

Dated March 17, 1919.

TOM DAVIS &
ERNEST A. MICHEL,
Attorneys for Plaintiff in Error.
BUTLER, MITCHELL & DOHERTY,
Attorneys for Defendant in Error.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 5030. Gus Eggen, Plaintiff in Error, vs. Canadian Northern Railway Company, Defendant in Error. Stipulation as to Return to Writ of Certiorari. Filed Mar. 26, 1919. E. E. Koch, Clerk.

66 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Gus Eggen is plaintiff in error, and Canadian Northern Rail-

way Company is defendant in error, No. 5030, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the District of Minnesota, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you
67 send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the thirteenth day of March, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

68 [Endorsed:] File No. 26,917. Supreme Court of the United States. No. 831, October Term, 1918. Canadian Northern Railway Company vs. Gus Eggen. Writ of Certiorari. Filed Mar. 26, 1919. E. E. Koch, Clerk.

Return to Writ.

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Gus Eggen, Plaintiff in Error, vs. Canadian Northern Railway Company, No. 5030, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause as mentioned in the certificate thereto.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-sixth day of March, A. D. 1919.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

69 [Endorsed:] File No. 26,917. Supreme Court U. S., October Term, 1918. Term No. 831. Canadian Northern Railway Co., Plff. in Error, vs. Gus Eggen. Writ of certiorari and return. Filed March 31, 1919.

No. 831 281

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

CANADIAN NORTHERN RAILWAY COMPANY,
Petitioner,

vs.

GUS EGGEN,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

WILLIAM D. MITCHELL,
PIERCE BUTLER,
Counsel for Petitioner,
St. Paul, Minnesota.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

CANADIAN NORTHERN RAILWAY COMPANY,
Petitioner,

vs.

GUS EGGEN,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable, the Supreme Court of the United States:

The petition of the Canadian Northern Railway Company respectfully shows to this Honorable Court:

The only question in this case is whether a statute of limitations of the State of Minnesota is repugnant to Section 2 of Article IV of the Constitution of the United States, preserving to the citizens of each state all privileges and immunities of citizens in the several states.

The Statute of Minnesota is as follows:

> "When a cause of action has arisen outside of this state, and, by the laws of the place where it arose, an action thereon is there barred by lapse of time, no such action shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued."
>
> Sec. 7709 Gen. Statutes of Minn. 1913.

This statute was declared invalid by the Circuit Court of Appeals on account of the exception in favor of citizens of Minnesota.

This action was brought in Minnesota by Gus Eggen, a citizen of North Dakota, against the Canadian Northern Railway Company, a corporation organized under the laws of the Dominion of Canada, to recover damages for personal injuries and the jurisdiction rested wholly on diverse citizenship.

Eggen, a resident of North Dakota, went to Canada, where he entered the employ of the petitioner at Humboldt in the Province of Saskatchewan, where he was injured in the course of his employment, on November 29, 1913. Some six months later he returned to North Dakota. He commenced this action on October 15, 1915, nearly two years after the date of his injuries.

The cause of action arose in Canada, the accident having occurred there while he was residing in Canada and employed by a Canadian corporation.

By the laws of Canada an action of this kind must be brought within one year from the time the injury is sustained.

If the statute of Minnesota, above quoted, be valid, it is applicable and the action being barred in Canada, could

not be maintained in Minnesota by a non-resident plaintiff. If the plaintiff had been a resident of Minnesota and had owned the cause of action since it accrued, the period of limitation under Minnesota law would have been six years.

The defendant pleaded the statute of limitations and the District Judge sustained its validity as against the constitutional objection and directed a verdict for the defendant on which judgment was entered.

The Circuit Court of Appeals, in an opinion filed November 18, 1918, reversed the judgment, holding the statute invalid. The court divided on the question, Judge Hook dissenting.

The petitioner relies on the principles stated in the dissenting opinion as follows:

> "I do not think the Minnesota statute should be held repugnant to the Constitution. It proceeds upon the principle that in a general sense a liability, debt or obligation is due at the domicile of the obligee and that he who owes it should go there to discharge it. Upon default it is not primarily the duty of the obligee to hunt his debtor beyond the boundaries of his state; he may await his coming within the jurisdiction of its courts. These are considerations in which an obligee domiciled in another state does not participate, and provisions of many state statutes of limitation proceed upon a recognition of them. It is not enough to say there is discrimination. Some difference in legislative treatment is warranted by a difference in conditions. * * * The statute of Minnesota does not deny non-residents the right to sue in its courts on causes of action arising elsewhere. It keeps its courts open to all as long as is allowed in the foreign jurisdiction where the cause of action arose, and then gives further time to those of Minnesota, and only those who have 'owned the cause of action ever since it accrued.' * * * The nearest approach to

the case at bar is Chemung Canal Bank v. Lowery, 93 U. S. 72. Like the case here, it involved the validity of a state statute of limitations under the 'privileges and immunities' clause of the Constitution. Concisely expressed, the statute provided that if the plaintiff resided in the state, the time should not run while defendant was out of the state, but that it should run if both plaintiff and defendant resided out of the state. In the consideration of the case residence was taken as synoymous with citizenship. It will be perceived that an exemption from the operation of the statute—from the running of the limitation—was accorded a resident creditor but not accorded a non-resident creditor, under precisely the same condition, to-wit, the non-residence of the debtor. The discrimination was held reasonable and the statute was sustained."

The statute here involved has been on the statute books of Minnesota since 1858 and has been frequently applied by the Minnesota Courts. Identical or similar statutes are found in California, Idaho, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Montana, Nevada, New York, Ohio, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Washington and Wisconsin. Some of these statutes have been in force for seventy years. All of them have been enforced and applied by the courts of the respective states in innumerable cases. The New York Statute was applied by this court in Penfield against the Chesapeake & Ohio Railroad, 134 U. S. 351.

The importance of the question appears from the fact that the decision of the Circuit Court of Appeals not only results in invalidating the legislation of Minnesota, but necessarily decrees the same fate to like legislation of many other states of the Union. The decision overturns a principle upon which the statutes of limitations of many

states are constructed, and will operate to revive numberless claims that have for years been considered barred.

The decision is opposed to the principles announced by this court in Chemung Canal Bank v. Lowery, supra, which the court below assumes has been overruled, the majority opinion saying of it:

> "For over forty years this decision has been passed in silence by the Supreme Court without once being cited, that we can discover, upon this constitutional point."

The petitioner submits that there is herein presented a question of general importance and public interest.

Your petitioner has herein no right of appeal to, or writ of error from, this Honorable Court because the jurisdiction of the District Court depended entirely upon diverse citizenship. Your petitioner presents herewith, as a part of this petition, a brief showing more fully its views upon the question involved and a transcript of the record in the Circuit Court of Appeals.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this court directed to the United States Court of Appeals for the Eighth Circuit commanding said court to certify to this court on a day certain to be therein designated a full and complete transcript of the record and all proceedings of said Court of Appeals in this case, to the end that the cause may be reviewed and determined by this court as provided by law and that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate.

WILLIAM D. MITCHELL,
For Canadian Northern Railway Company.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

CANADIAN NORTHERN RAILWAY COMPANY,
Petitioner,

vs.

GUS EGGEN,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE QUESTION HERE PRESENTED IS ONE OF GENERAL IMPORTANCE AND PUBLIC INTEREST.

Statutes, either identical in form or embodying the same principle as the Minnesota Statute are found in the following states:

California:

Section 5463 Statutes of 1868.

Section 361 Fairall's Code of Civil Procedure 1916.

Steward v. Spaulding, 72 Cal. 264.

Allen v. Allen, 90 Cal. 64.

McKee v. Dodd, 152 Cal. 63.

Idaho:

Section 179 Code of Civil Procedure 1881.

Section 4079 Revised Codes of 1908.

Alspaugh v. Reed, 6 Idaho 223.

Kansas:

Section 29, Chap. 25, Laws of 1859.

Section 6911 Gen. Statutes 1915.

Bruner v. Martin, 76 Kan. 862.

Kentucky:

Sections 18 and 19 Chap. 63 Revised Statutes of 1852.

Section 2542 Kentucky Statutes 1915.

McArthur v. Goddin, 12 Bush 274.

LaBatt v. Smith, 83 Kentucky 599.

Hoerter v. Garrity, 155 Kentucky 260.

Louisiana:

Page 224 Laws of 1855.

Section 5509 Marr's Annotated Revised Statutes.

Walworth v. Routh, 14 La. Ann. 205 (1859).

Newman v. Eldridge, 107 La. 315.

Maine:

Chap. 376 Laws of 1885.

Sec. 1063, Page 1219, Revised Statutes 1916.

MacNichol v. Spence, 83 Maine 87.

Massachusetts:

Chap. 98 Statutes of 1880.

Sec. 9, Chap. 202, Revised Laws of Mass. 1902.

McCann v. Randall, 147 Mass. 81.

Montana:

Sec. 556 Code Civil Procedure Montana Codes 1895.

Sec. 6473 Revised Codes Montana 1907.

Nevada:

Sec. 3603 Compiled Laws of 1900.

Sec. 4947 Revised Laws of 1912.

Lewis v. Hyams, 26 Nev. 68.

New York:

Sec. 390 Code Civil Procedure, September, 1877.

Sec. 390 and Sec. 390a, Bliss N. Y. Ann. Code, 6th Ed.

Clark v. Lake Shore & Michigan Southern, 94 N. Y. 217 (1882.)

Penfield v. Railroad, 134 U. S. 351.

Aultman & Taylor Co. v. Syme, 79 Fed. 238.

Ohio:

Ohio had such a statute from 1831 to 1878, adopted Feb. 18, 1831, III Chase 1769; re-enacted, Chap. 4, Sec. 22, Civil Code, July 1, 1853. The statute was repealed May 14, 1878.

Oklahoma:

Sec. 3894 Statutes of 1893.

Sec. 4661 Revised Laws of 1910.

Doughty v. Funk, 15 Okla. 643.

Oregon:

Sec. 26 Code of Civil Procedure, Page 8, Gen. Laws of 1862.

Sec. 26, Chap. II, Lord's Oregon Laws.

McCormick v. Blanchard, 7 Ore. 232 (1879).

Jameson v. Potts, 55 Ore. 292.

Hamilton v. Northern Pacific S. S. Co., 84 Ore. 71.

Rhode Island:,

Chap. 457 Public Laws of 1909.

Utah:

Sec. 1731 Compiled Laws of 1876.
Sec. 2899 Compiled Laws of 1907.
Lawson v. Tripp, 34 Utah 28.

Vermont:

No. 13 Laws of 1854.
Sec. 1563 Public Statutes 1906.

Washington:

Sec. 20, Page 365, Laws of 1854.
Sec. 178 Remington's Codes 1915.
McCain v. Gibbons, 7 Wash. 315.
Freundt v. Hahn, 24 Wash. 9.
McElroy v. Gates, 64 Wash. 250.

Wisconsin:

Sec. 28, Chap. 138, Revised Statutes of 1858.
Sec. 4231 Wis. Statutes 1917.

Additional instances in which these statutes have been applied by the courts will be found in:

American Digest, Decennial Edition, Vol. 12, Limitation of Actions, Sec. 2, Subdivision (1), Sec. 169.
Vol. 25, Cyclopedia of Law & Procedure, Page 1022, Note 88.
Wharton Conflict of Laws, 3d Edition, Sec. 537a, and notes.
Note to Brunswick Terminal Co. v. National Bank of Baltimore, 48 L. R. A. 625, 639.

The Minnesota statute first appears as Sec. 39, Chap. 72, Page 629, Compiled Statutes 1849-58. Since 1864 it has

been enforced and applied without question as to its validity.

Fletcher v. Spaulding, 9 Minn. 64.
Hoyt v. McNeil, 13 Minn. 390.
Luce v. Clarke, 49 Minn. 356.
Powers Mercantile Co. v. Blethen, 91 Minn. 339.
Drake v. Bigelow, 93 Minn. 112.

The statutes of California, Idaho, Nevada and Utah are substantially identical in terms with the Minnesota statute. The statutes of Kentucky, Kansas, Louisiana, Oklahoma, Oregon and Washington are substantially alike and produce the same result as the Minnesota statute although framed in different language. The Kentucky statute may be quoted as an illustration of this type. It is as follows:

> "Sec. 2542. ACTION BARRED IN STATE WHERE IT ACCRUED BARRED HERE. When a cause of action has arisen in another state or country between residents of such state or country or between them and residents of another state or country, and by the laws of the state or country where the cause of action accrued an action cannot be maintained thereon by reason of the lapse of time, no action can be maintained thereon in this state."

The New York statute, from which the law of Montana is copied, is as follows:

> "Sec. 390. ACTION AGAINST A NON-RESIDENT. Where a cause of action, which does not involve the title to or possession of real property within the state, accrues against a person, who is not then a resident of the state, an action cannot be brought thereon in a court of the state, against him or his personal representative, after the expiration of the time, limited, by the laws of his residence, for bringing a like action, except by a resident of the state, and in one of the following cases:

1. Where the cause of action originally accrued in favor of a resident of the state.

2. Where, before the expiration of the time so limited, the person, in whose favor it originally accrued, was or became a resident of the state; or the cause of action was assigned to, and thereafter continuously owned by a resident of the state."

"Sec. 390-a. CAUSE OF ACTION ARISING OUTSIDE OF STATE. Where a cause of action arises outside of this state, an action cannot be brought, in a court of this state, to enforce said cause of action, after the expiration of the time limited by the laws of the state or country where the cause of action arose, for bringing an action upon said cause of action, except where the cause of action originally accrued in favor of a resident of this state. Nothing in this act contained shall affect any pending action or proceeding."

The statutes of Maine, Massachusetts, Rhode Island, Vermont and Wisconsin differ in form from each other and from the statutes of other states, but all result in a different period of limitation for a non-resident plaintiff than is applied in the case of a resident plaintiff, where the cause of action arises outside of the state.

This reference to the statutes and decisions of other states makes it clear that the question presented is one of such general importance and public interest as to justify this court in issuing a writ of certiorari.

The situation is like that in Robinson v. Ocean S. N. Co., 112 N. Y. 325, where it is said:

"A construction of the constitutional limitation which would apply it to such a case as this would strike down a large body of laws which have existed in all the states from the foundation of the Government, making some discrimination between residents and non-residents in legal proceedings and other matters."

II.

THERE IS HERE A SITUATION THE EQUIVALENT OF A CONFLICT BETWEEN THE DECISIONS OF THE STATE COURTS IN THE EIGHTH CIRCUIT AND THE DECISION OF THE CIRCUIT COURT OF APPEALS IN THIS CASE.

Seven states of the Eighth Judicial Circuit have statutes identical with or similar to the Minnesota statute. In all these states these statutes have been in force for many years and have been repeatedly applied and enforced by the courts. While we can point to no state decision in which the question here involved has been considered, it is not to be imagined that the courts of these states would agree with the decision of the Circuit Court of Appeals. Under these circumstances as much reason exists for the issuance of a writ of certiorari as if a state decision in direct conflict with the decision of the Circuit Court of Appeals could be pointed out.

III.

THE STATUTE OF MINNESOTA IS NOT REPUGNANT TO SECTION 2, ARTICLE IV. OF THE CONSTITUTION OF THE UNITED STATES.

It is not appropriate at this time to present an elaborate argument in support of the validity of this statute. There are, however, a few considerations which may be mentioned.

That statute like the one denounced have been adopted so generally and have been enforced for so long a period of time without question as to their validity, is persuasive

evidence of their constitutionality. We doubt if the Circuit Court of Appeals realized the far-reaching effect of its decision or the extent to which the principle embodied in the Minnesota statute has been acquiesced in as valid legislation.

It cannot be said that there is an inequality of privilege where there is an inequality of condition and circumstance.

In the case of Chemung Canal Bank v. Lowery, 93 U. S. 72, this court had under consideration a statute of Wisconsin, which provided that:

> "If, when the cause of action shall accrue against any person who shall be out of the state, such action may be commenced within the terms herein respectively limited, after the return of said person into this state, but the foregoing provision shall not apply to any case where, at the time the cause of action shall accrue, neither the party against or in favor of whom the same shall accrue, are residents of this state."

The court analyzed the statute in the following language:

> "This statute may be expressed shortly thus: When the defendant is out of the state the statute of limitations shall not run against the plaintiff if the latter resides in the state, but shall if he resides out of the state. The argument of the plaintiff is that as the law refuses non-residents of the state an exemption from its provisions, which is accorded to residents, it is repugnant to that clause of the Constitution of the United States which declares that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

The court then rejected this contention, saying:

> "It is contended, that, if the resident creditors of the state may sue their non-resident debtors, at any

> time within six or ten years after they return to the state, non-resident creditors ought to have the same privilege; or else an unjust and unconstitutional discrimination is made against them. This seems, at first view, somewhat plausible; but we do not regard the argument as a sound one. There is, in fact, a valid reason for the discrimination. If the statute does not run as between non-resident creditors and their debtors, it might often happen that a right of action would be extinguished, perhaps for years, in the state where the parties reside; and yet, if the defendant should be found in Wisconsin,—it may be only in a railroad train,—a suit could be sprung upon him after the claim had been forgotten. The laws of Wisconsin would thus be used as a trap to catch the unwary defendant, after the laws which had always governed the case had barred any recovery. This would be inequitable and unjust."

In Aultman & Taylor Co. v. Syme, 79 Fed. 238, the Circuit Court of Appeals of the Second Circuit, in applying a similar statute of the State of New York, said:

> "There is nothing extraordinary or objectionable in a provision that when a cause of action arises between non-residents of this state and the laws of the state where it arose gave it but a limited lifetime which has expired, the removal of one of the parties into this state to become a resident thereof, shall not operate to revive the cause of action in favor of the non-resident."

Statutes of limitation generally provide that the limitation shall not run while the debtor is a non-resident of the state but shall, if he be a resident of the state. The effect of this statute is to give to a resident defendant a defense which is denied to a non-resident defendant. If the principles announced by the Circuit Court of Appeals are correct it would seem to follow that such statutory distinctions could not be justified.

The difference in the rights of a resident and a non-resident plaintiff produced by the statute in question, does not arise merely from a difference in citizenship but is based on a difference in situation and in facility for bringing suit resulting from a difference in location.

Under the Minnesota statute the additional period granted to resident plaintiffs is not based on mere citizenship. A citizen or resident of Minnesota who has not been such, and owned the cause of action since it accrued, is in no better situation than a citizen of North Dakota. The underlying basis for the distinction, therefore, is not merely the fact of citizenship but the circumstance that the resident plaintiff, who has been such, and owned the cause of action since it accrued, by reason of those conditions cannot be charged with the same delinquency in prosecuting his claim against a non-resident as is chargeable to a non-resident plaintiff or is imputed to a resident plaintiff who has purchased the claim by assignment from a non-resident. In other words, the Constitution does not prohibit a discriminttion between citizens of different states as to the time within which a suit may be maintained if that discrimination is logically based upon a practical difference in the conditions which have surrounded the prosecution of the claim.

The word "citizen," as used in the Minnesota statute, is synonymous with the word "resident." It has been so treated in the Minnesota decisions and if there be any vice in the use of the word "citizen" instead of the word "resident" the history of these statutes and the purposes they are intended to accomplish would justify construing the word "citizen" to mean "resident." Certainly this con-

struction should be adopted if necessary to sustain the statute.

We submit first, that the question involved is one of general importance and public interest; second, that a situation exists which is the equivalent of a conflict between the decision of the Circuit Court of Appeals and the courts of the states in the Eighth Judicial Circuit; third, that there is grave doubt as to whether the Circuit Court of Appeals has reached a correct conclusion.

WILLIAM D. MITCHELL,
PIERCE BUTLER,
Counsel for Petitioner,
St. Paul, Minnesota.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 281.

CANADIAN NORTHERN RAILWAY COMPANY,
Petitioner,

vs.

GUS EGGEN,
Respondent.

BRIEF FOR PETITIONER.

STATEMENT.

This case is here on writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit. The only question is as to the validity of a Minnesota statute of limitations in these terms:

> "When a cause of action has arisen outside of this state, and, by the laws of the place where it arose, an action thereon is there barred by lapse of time,

> no such action shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued."
>
> Sec. 7709, Gen. Stat. of Minn. 1913.

The Court of Appeals held this statute invalid on the ground that the exception in favor of citizens of Minnesota violated the privilege and immunity clause of Section 2, Article IV of, and the 14th Amendment to the Constitution of the United States. (Fol. 57.)

The action was brought in Minnesota (Fol. 1) by the respondent, a citizen of North Dakota (Fol. 47), against the petitioner, Canadian Northern Railway, a corporation organized under the laws of the Dominion of Canada (Fol. 12) to recover damages for personal injuries. Eggen, a resident of North Dakota, went to Canada, where he entered the employ of the petitioner at Humboldt in the Province of Saskatchewan, where he was injured in the course of his employment (Fol. 27) on November 29th, 1913 (Fol. 36). He remained in Canada for six months after the accident (Fol. 47) and then returned to North Dakota. He commenced this action on October 15, 1915, (Fol. 47) nearly two years after the date of the accident. The cause of action arose in Canada, the accident having occurred there while he was residing there and employed there by a Canadian corporation. By the laws of Canada, an action of this kind must be commenced within one year from the time the injury is sustained (Fol. 4, 36). If the statute of Minnesota, above quoted, is valid, it is applicable, and the action being barred in Canada, could not be maintained in Minnesota by a non-resident plaintiff. If the plaintiff had been a resident of Minnesota and had

owned the cause of action since it accrued, the above statute would have been inapplicable, and the general statute of limitations of Minnesota, allowing a period of six years within which to commence the action, would have applied. The answer interposed by the petitioner in the trial court properly pleaded the statute of limitations (Fol. 4). The trial court sustained the statute (Fol. 41), held that it applied, and directed a verdict for the defendant (Fol. 42). The case went to the Circuit Court of Appeals, where the Court (Fol. 57) (Judge Hook, dissenting, (Fol. 60)) held the statute invalid, reversed the judgment, and ordered a new trial.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred in holding that the Statute of Limitations of Minnesota (Section 7709, Gen. Statutes of Minn. 1913) violated Sec. 2, Article IV of, or the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT.

I.

THE DISTINCTION MADE IN THE STATUTE IN FAVOR OF CITIZENS OF MINNESOTA IS NOT ARBITRARY, BUT BASED ON PRACTICAL DIFFERENCES IN THE CONDITIONS SURROUNDING THE PROSECUTION OF CLAIMS, WHICH FORM A REASONABLE BASIS FOR CLASSIFICATION.

Neither the privilege and immunity clause in Sec. 2, Art. IV, nor the "equal protection" provision of the Federal Constitution requires exact equality of right or privilege under all conditions. An inequality of condition or circumstance may justify an inequality, or rather a difference, in privilege. The power to classify exists, and a difference in right or privilege resulting from classification is not objectionable, provided the classification has a reasonable basis, and rests on a real distinction which bears a just relation to the attempted classification and is not a mere arbitrary selection.

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 294.

Granting the power of classification, we must grant Government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous.

Citizens Telephone Co. v. Fuller, 229 U. S. 322, 331.

Such classification need not be either logically appropriate or scientifically accurate.

District of Columbia v. Brooke, 214 U. S. 138, 150.

The statement in the opinion in Chambers v. B. & O. R. R. Co., 207 U. S. 142, 148, 149, that the right to sue and defend in the courts must be allowed by each state to the citizens of all other states "to the precise extent that it is allowed to its own citizens" must be read in the light of these principles. It means that the right must be precisely the same if the conditions are precisely the same. If the language of that opinion were to be applied literally, it would nullify statutes, admittedly valid, requiring non-resident plaintiffs to give bonds for costs.

Applying these principles, we contend that the Constitution does not prohibit a discrimination between residents of different states as to the time within which a suit may be commenced if that discrimination is based upon a practical difference in the conditions which have surrounded the prosecution of the claim, resulting from a difference in residence. Statutes of limitations are designed to give a creditor a reasonable time in which to commence proceedings to enforce his claim, and to bar the claim after such time elapses. For this reason, such statutes take into account all facts surrounding the prosecution of the claim, and vary accordingly the length of time allowed, and circumstances and conditions which tend to excuse delay form the basis for extensions of the periods fixed. Residence, as affecting the facility for bringing suit, is an important factor in all statutes of limitation. A difference is made in the time allowed to bring suit against resident and nonresident defendants.

Such discrimination in favor of a resident defendant is not invalid, being based on a difference in situation, that is, the difficulty in bringing suit against a non-resident. In fact, residence is the fundamental factor in all statutes of limitation. It follows that facility for bringing suit and residence as affecting that facility are circumstances properly forming the basis for differences between residents and non-residents as to the time suits must be commenced.

In the statute under consideration, the underlying basis for the distinction made by the exception is not merely the fact of residence or citizenship in Minnesota, but the fact that the resident plaintiff, who has owned the cause of action since it accrued, cannot be charged with the same delinquency in prosecuting his claim against a non-resident as is chargeable to a non-resident plaintiff or is imputed to a resident plaintiff who has purchased the claim by assignment from a non-resident. It is plain that the Minnesota statute is not a clear and hostile discrimination against citizens of other states. Citizenship is not the sole basis for the discrimination. The exception favors only those who have owned the cause of action since it accrued. Citizens of Minnesota who have not owned a claim since it accrued are in no better position than non-residents. Again, it is only in cases where the foreign statute happens to prescribe a shorter period of limitation than the Minnesota statute that any difference exists between resident and non-resident plaintiffs. The statute applies only to causes of action arising outside of the state, and is based on the assumption (which the decisions applying such statutes show to be correct) that in most cases causes of action arise where the debtor

resides, and that if the creditor is a non-resident, he usually resides where the debtor does and where the cause of action arose. Consequently, if the non-resident creditor allows the claim to be barred by the laws of the place where it arose, he is subject to the charge of greater delinquency in failing to pursue the claim than would a resident of Minnesota, who would have been required to go into a foreign jurisdiction to sue in order to prevent the claim being barred by the laws of the place where it arose. Such circumstances surrounding the prosecution of the claim justify a classification based on the diligence which has been exercised, and of which the test is residence. Such statutes proceed also on the theory that where a non-resident creditor has permitted a claim to be barred where it arose and where the debtor resided, he ought not, when that debtor removes to a new jurisdiction, be permitted to follow him there and revive the cause of action in a foreign jurisdiction. It may be suggested that the facts do not always show the existence of such conditions, and the case at bar may be cited as an illustration, on the ground that the plaintiff was a resident of North Dakota and was subject to the same difficulties as a citizen of Minnesota in suing in Canada, where the cause arose.

In Magoun v. Illinois Trust & Savings Bank, 170 U. S., at page 296, it is said:

> "There is therefore no precise application of the rule of reasonableness of classification, and the rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things."

The practical equity of the statute even in this case is shown by the fact that the respondent was an actual resident of Canada when the accident occurred; that he remained there six months after the accident; that even after he returned to North Dakota, he allowed six months more to elapse, during which the courts of Minnesota and Canada remained open to him, and now he seeks to burden the courts of Minnesota with a controversy which arose in another jurisdiction, where neither of the parties are citizens of Minnesota, and where, in all probability, none of the witnesses reside.

It is reasonably clear, therefore, that this statute was not intended as a hostile discrimination against non-residents; that the classification effected in the exception is not arbitrary, but based on practical experience, and the distinctions are based on differences in practical conditions surrounding the prosecution of certain claims, which result from differences in residence.

It may be suggested that the test applied by the Minnesota statute is not residence, but citizenship, and therefore the justification for classification fails. This suggestion is without merit. Innumerable cases might be cited to show that the word "citizen", as used in state statutes, is often synonymous with the word "resident" and may be so construed.

Cairnes v. Cairnes, 29 Colo. 260.

Union Hotel Co. v. Hersee, 79 N. Y. 454.

Smith v. Birmingham Water Works Co., 104 Ala. 315.

Risewick v. Davis, 19 Md. 82, 93.

Judd v. Lawrence, 55 Mass. 531, 5.

Bacon v. Board of State Tax Commissioners, 126 Mich. 22.

Cobbs v. Coleman, 14 Texas, 594, 597.
State v. The Trustees, 11 Ohio 24, 28.
Baughman v. National Waterworks Co., 46 Fed. R. 4, 7.
Harding v. Standard Oil Co., 182 Fed. R., 421, 3, 4.
Devanney v. Hanson, 60 W. Va. 3.
Sedgwick v. Sedgwick, 50 Colo. 164.
Stevens v. Larwill, 110 Mo. App. 140.

The evident purpose of the legislature and the principles underlying this statute would justify this interpretation if necessary to sustain it. It is likely that the word "citizen" was used to make it clear that permanent residence or domicile, and not temporary residence, is the test, an idea which accords with the reasons on which the statute is based. But if the word "citizen" be accepted as having a different meaning than "resident", the result is the same. The Fourteenth Amendment states that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States *and of the state wherein they reside.*" To be a citizen of Minnesota, a person must be a resident of the state. It follows that residence forms a real basis for the classification made by the Minnesota statute. Using the word "citizen", the statute is the same as if the exception favored "residents other than aliens." Only aliens could take exception to the use of the word "citizen" instead of "resident". The privilege and immunity clause of the Constitution does not apply to aliens, and, as to the equal protection clause, it is enough to say that no alien is a party to this suit, and only those injuriously affected can urge the invalidity of a statute.

Standard Stock Food Co. v. Wright, 225 U. S. 540.

II.

IF THE VALIDITY OF THIS STATUTE BE IN DOUBT, LEGISLATIVE AND JUDICIAL ACQUIESCENCE IN THE VALIDITY OF SUCH STATUTES FOR A LONG PERIOD OF TIME SHOULD OPERATE TO RESOLVE THAT DOUBT IN FAVOR OF THE STATUTE.

The statute here involved has been on the statute books of Minnesota since 1858, and has been enforced and applied for over fifty-six years without question as to its validity.

Sec. 39, Chap. 72, p. 629, Compiled Statutes of Minnesota 1849-58.
Sec. 16, Chapter 66, Statutes of Minn. 1866.
Secs. 15, 16, Chapter 66, Statutes of Minn. 1878.
Fletcher v. Spaulding, 9 Minn. 64 (1864).
Hoyt v. McNeil, 13 Minn. 390.
Luce v. Clarke, 49 Minn. 356.
Powers Mercantile Co. v. Blethen, 91 Minn. 339.
Drake v. Bigelow, 93 Minn. 112.

In the appendix are references to statutes of other states either identical in form with or embodying the same principle as the Minnesota statute, and references to cases in which they have been applied and enforced.

The statutes of California, Idaho, Nevada and Utah are substantially identical in terms with the Minnesota statute. They use the word "citizen", instead of "resident."

The statutes of Kentucky, Kansas, Louisiana, Oklahoma, Oregon and Washington are substantially alike and

produce the same result as the Minnesota statute, although framed in different language. The Kentucky statute may be quoted as an illustration of this type. It is as follows:

> "Sec. 2542. ACTION BARRED IN STATE WHERE IT ACCRUED BARRED HERE. When a cause of action has arisen in another state or country between residents of such state or country or between them and residents of another state or country, and by the laws of the state or country where the cause of action accrued an action cannot be maintained thereon by reason of the lapse of time, no action can be maintained thereon in this state."

The New York statute, from which the law of Montana is copied, is as follows:

> "Sec. 390. ACTION AGAINST A NON-RESIDENT. Where a cause of action, which does not involve the title to or possession of real property within the state, accrues against a person, who is not then a resident of the state, an action cannot be brought thereon in a court of the state, against him or his personal representative, after the expiration of the time, limited, by the laws of his residence, for bringing a like action, except by a resident of the state, and in one of the following cases:
>
> 1. Where the cause of action originally accrued in favor of a resident of the state.
>
> 2. Where, before the expiration of the time so limited, the person, in whose favor it originally accrued, was or became a resident of the state; or the cause of action was assigned to, and thereafter continuously owned by a resident of the state."

> "Sec. 390-a. CAUSE OF ACTION ARISING OUTSIDE OF STATE. Where a cause of action arises outside of this state, an action cannot be brought, in a court of this state, to enforce said cause of action, after the expiration of the time limited by the laws of the state or country where the cause of action arose, for bringing an action upon said cause of action, except where the

cause of action originally accrued in favor of a resident of this state. Nothing in this act contained shall affect any pending action or proceeding."

The statutes of Maine, Massachusetts, Rhode Island, Vermont and Wisconsin differ in form from each other and from the statutes of other states, but all result in a different period of limitation for a non-resident plaintiff than is applied in the case of a resident plaintiff, where the cause of action arises outside of the state.

The dates at which the various states adopted such statutes is historically interesting. In the early period of the history of our country, when travel was difficult and few persons removed from one jurisdiction to another, no need was felt for such a law, and none are to be found on the statute books. As the tide of immigration swept westward and people in large numbers moved to new places, it was found that they were being pursued into the new jurisdictions, and stale claims, long since barred by the law of the places where they arose, were asserted against them, advantage being taken of the rule that the statute of limitations of the forum was applied. The necessity for legislation on the subject then arose. Such statutes were enacted in Ohio in 1831, Kentucky 1852, Louisiana 1855, Minnesota 1858, Wisconsin 1858, Kansas 1859, Washington 1854, Oregon 1862, California 1868. Later the older states took up the idea. New York in 1877, Massachusetts in 1880, Maine in 1885, and Rhode Island in 1909.

These statutes have been applied by the courts in hundreds of cases, covering over a period of nearly three-quarters of a century.

This court applied the New York statute in 1889, and no question was raised as to its validity.

Penfield v. Chesapeake, &c. Rd. Co., 134 U. S. 351.

We find only four cases in which the validity of such statutes has ever been questioned.

In Chemung Canal Bank v. Lowery, 93 U. S. 72, (1876), this Court considered a Wisconsin statute, which provided:

> "If when the cause of action shall accrue against any person he shall be out of the state, such action may be commenced within the terms herein specified after the return of said person into this state. But the foregoing provision shall not apply to any case where, at the time the cause of action shall accrue, neither the party against or in favor of whom the same shall accrue are residents of this state."

This statute, though differing from the Minnesota statute in form, and to some degree in the conditions under which it applies, embodies the identical principle. The cause of action in that case arose in New York in favor of a New York corporation. The action was brought in Wisconsin, the plaintiff not being a resident of that state. The general period of limitation fixed by Wisconsin law was ten years, which had elapsed since the claim arose in New York. The defendant, however, had been in Wisconsin less than ten years. Under the statute, the plaintiff, being a non-resident, could not maintain the action. If the plaintiff had been a resident of Wisconsin, the action could have been maintained. The court said:

> "This statute may be expressed shortly thus: When the defendant is out of the state, the Statute of Limitations shall not run against the plaintiff, if the

latter resides in the state, but shall, if he resides out of the state. The argument of the plaintiff is, that, as the law refuses to non-residents of the state an exemption from its provisions, which is accorded to residents, it is repugnant to that clause of the Constitution of the United States (art. 4, sect. 2) which declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.' It is contended, that, if the resident creditors of the state may sue their non-resident debtors, at any time within six or ten years after they return to the state, non-resident creditors ought to have the same privilege; or else an unjust and unconstitutional discrimination is made against them. This seems, at first view, somewhat plausible; but we do not regard the argument as a sound one. There is, in fact, a valid reason for the discrimination. If the statute does not run as between non-resident creditors and their debtors, it might often happen that a right of action would be extinguished, perhaps for years, in the state where the parties reside; and yet, if the defendant should be found in Wisconsin,—it may be only in a railroad train,—a suit could be sprung upon him after the claim had been forgotten. The laws of Wisconsin would thus be used as a trap to catch the unwary defendant, after the laws which had always governed the case had barred any recovery. This would be inequitable and unjust. Beardsley v. Southmayd, 3 N. J. L. (Green) 171.

It is also to be considered, that a personal obligation is due at the domicile of the obligee. It is the duty of the debtor to seek the creditor, and pay him his debt, at the residence of the latter. Not doing this, he is guilty of laches against the law of the creditor's domicile, as well as his own. But he evades this law by absenting himself from the jurisdiction. As long as he does this, the Statute of Limitations of that jurisdiction ought not to run to the creditor's prejudice. This cannot be said with regard to the non-resident creditor. It is not the laws of Wisconsin any more than those of China which his non-resident debtor contemns by non-payment of the debt, and

> absence from the state; it is the laws of some other state. Therefore, there is no reason why the Statute of Limitations of Wisconsin should not run as against the non-resident creditor; at least, there is not the same reason which exists in the case of the resident creditor."

This decision was passed over by the court below with the statement:

> "For over forty years this decision has been passed in silence by the Supreme Court, without once being cited, that we can discover, upon this Constitutional point."

The decision was cited with approval by this Court in Anglo-Am. Prov. Co. v. Davis Prov. Co., 191 U. S. 373, 375. Even if it had been "passed in silence", the presumption would be not that it had been overruled, but that the principles it announced were accepted as law so well established that no one has had the temerity to question it.

In 1897, the Circuit Court of Appeals of the 2nd Circuit, on which sat the late Justice Peckham, said, in Aultman & Taylor Co. v. Syme, 79 Fed. R. 238:

> "There is nothing extraordinary or objectionable in a provision that where a cause of action arises between non-residents of this state, and the laws of the state where it arose give it but a limited lifetime, which has expired, the removal of one of the parties into this state, to become a resident thereof, shall not operate to revive the cause of action in favor of the non-resident."

In Robinson v. Oceanic Steam Navigation Co., 112 N. Y. 315, 324 (1889) the Court of Appeals of New York, considering the New York Statute, said:

> "This section makes no discrimination between citizens, but between residents and non-residents. With-

out attempting to define the full scope of that constitutional provision, it is sufficient to say that it has no application to a case like this, and there are numerous decisions to that effect. Adams v. Penn. Bank of Pittsburgh, 35 Hun. 393; Frost v. Brisbin, 19 Wend. 11 (32 Am. Dec. 423); Lemmon v. People, 20 N. Y. 562; Haney v. Marshall, 9 Md. 194; Campbell v. Morris, 3 Har. & McH. (Md.) 535; Chemung Canal Bank v. Lowery, 93 U. S. 72 (23 L. Ed. 806); McCready v. Virginia, 94 U. S. 391 (24 L. Ed. 248); Missouri v. Lewis, 101 U. S. 22 (25 L. Ed. 989). A construction of the constitutional limitation which would apply it to such a case as this would strike down a large body of laws which have existed in all the states from the foundation of the government, making some discrimination between residents and non-residents in legal proceedings and other matters."

Although a difference was suggested between a statute making a distinction between "citizens" and one making a distinction between "residents", we have shown above that only aliens could raise that point, and it is not here involved.

Again, in Klotz v. Angle, 220 N. Y. 347, 358, the same court again considered the question, and, after referring to the previous case, said:

> "Since that decision this court has applied in like manner section 390a of the Code of Civil Procedure. (Shipman v. Treadwell, 208 N. Y. 404, 102 N. E. 634.) Numerous provisions of the Code of Civil Procedure might be referred to where discrimination is made between residents and non-residents, and the validity of which, together with the power of the Legislature to enact the same, has never been questioned. A careful examination of the cases cited by counsel urging the proposition does not satisfy me that they sustain his argument."

Similar statutes have been applied in innumerable cases, without any question as to their validity, and their validity has been acquiesced in by the legislatures and courts for nearly ninety years. If there be doubt as to the constitutionality of the law, this long acquiescence would be persuasive, and should be controlling.

Stuart v. Laird, 1 Cranch 299.

Field v. Clark, 143 U. S. 649, 691.

We submit that the distinctions made by the statute are not hostile or arbitrary, but are based on differences in conditions surrounding the prosecution of claims, which form a reasonable basis for classification, and that the long acquiescence of legislatures and courts should resolve any doubts in favor of its validity

WILLIAM D. MITCHELL,
PIERCE BUTLER,
Counsel for Petitioner,
St. Paul, Minnesota.

APPENDIX.

Statutes, either identical in form or embodying the same principle as the Minnesota Statute are found in the following states:

California:

Section 5463 Statutes of 1868.

Section 361 Fairall's Code of Civil Procedure 1916.

Steward v. Spaulding, 72 Cal. 264.

Allen v. Allen, 90 Cal. 64.

McKee v. Dodd, 152 Cal. 63.

Idaho:

Section 179 Code of Civil Procedure 1881.

Section 4079 Revised Codes of 1908.

Alspaugh v. Reed, 6 Idaho 223.

Kansas:

Section 29, Chap. 25, Laws of 1859.

Section 6911 Gen. Statutes 1915.

Bruner v. Martin, 76 Kan. 862.

Kentucky:

Sections 18 and 19 Chap. 63 Revised Statutes of 1852.

Section 2542 Kentucky Statutes 1915.

McArthur v. Goddin, 12 Bush 274.

LaBatt v. Smith, 83 Kentucky 599.

Hoerter v. Garrity, 155 Kentucky 260.

Louisiana:

Page 224 Laws of 1855.

Section 5509 Marr's Annotated Revised Statutes.

Walworth v. Routh, 14 La. Ann. 205 (1859).

Newman v. Eldridge, 107 La. 315.

Maine:

Chap. 376 Laws of 1885.

Sec. 1063, Page 1219, Revised Statutes 1916.

MacNichol v. Spence, 83 Maine 87.

Massachusetts:

Chap. 98 Statutes of 1880.

Sec. 9, Chap. 202, Revised Laws of Mass. 1902.

McCann v. Randall, 147 Mass. 81.

Montana:

Sec. 556 Code Civil Procedure Montana Codes 1895.

Sec. 6473 Revised Codes Montana 1907.

Nevada:

Sec. 3603 Compiled Laws of 1900.

Sec. 4947 Revised Laws of 1912.

Lewis v. Hyams, 26 Nev. 68.

New York:

Sec. 390 Code Civil Procedure, September, 1877.

Sec. 390 and Sec. 390a, Bliss N. Y. Ann. Code, 6th Ed

Clark v. Lake Shore & Michigan Southern, 94 N. Y. 217 (1882).

Penfield v. Railroad, 134 U. S. 351.

Aultman & Taylor Co. v. Syme, 79 Fed. 238.

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 281.

CANADIAN NORTHERN RAILWAY COMPANY,
Petitioner,

vs.

GUS EGGEN,
Respondent.

On writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

Motion to Dismiss, Affirm or Transfer for Hearing to the Summary Docket.

TOM DAVIS, AND
ERNEST A. MICHEL,
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Respondent, Gus Eggen,
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On writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

Motion to Dismiss, Affirm or Transfer for Hearing to the Summary Docket.

Now comes the above named Gus Eggen, respondent, and respectfully moves the court:

1st. That the writ of certiorari herein be dismissed and denied because no question is presented authorizing this court to take jurisdiction of this case.

2nd. In the alternative that the judgment of the Circuit Court of Appeals of the United States for the Eighth Circuit be affirmed, because the question on which the jurisdiction of this court depends, is so frivolous so as not to need further argument, and,

3rd. In case neither of said above motions be sustained or granted that the cause be transferred for hearing to the Summary Docket, because the sole question involved is of such a character as not to justify extended argument.

Attorneys of Record for
Respondent, Gus Eggen,
419 Metropolitan Bank Building,
Minneapolis, Minnesota.

STATEMENT OF THE CASE.

The facts in this case, briefly, are these:

Gus Eggen, a citizen of the state of South Dakota, was injured on a Canadian Railway in the Dominion of Canada. Slightly more than a year later he brought action against the railway company in the state of Minnesota.

The Canadian Statute of Limitations provides that such actions shall be brought within one year. This requirement, however, is no part of the right to bring an action but is purely a Statute of Limitations as held by the Canadian courts.

It was conceded at the trial that the general Statute of Limitations for the bringing of personal injury actions in the state of Minnesota under Section 7701 of the General Statutes of Minnesota for the year 1913, is six years.

Another section of the statute, Section 7709, however, provides as follows:

> "When a cause of action has arisen outside of this state, and, by the laws of the place where it arose, an action thereon is there barred by lapse of time, no such action shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued."

This case comes squarely within Section 7709 and the question here involved is whether or not that section is violative of Section II, Article IV of the National Constitution and also of the Fourteenth Amendment thereto.

Section II, Article IV is as follows:

> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Upon the trial of the action in the District Court a verdict was directed for the defendant on the ground that the action was barred by reason of Section 7709 and that the Canadian limitation of one year governed the cause.

Gus Eggen was not a resident of the State of Minnesota but was a resident of the State of South Dakota and under Section 7709 he was governed by the Canadian Statute of Limitations as to the time within which he must bring his action.

The court held that he would not be entitled to the six-year Statute of Limitations, which applied only to residents of the state of Minnesota.

A writ of error was sued out to the Circuit Court of Appeals and that court held that the statute in question was unconstitutional and reversed the decision of the District Court. See page 49 of the Record.

Thereafter the petition for a writ of certiorari herein was granted and in the petition only one question is raised and that is as to the constitutionality of Section 7709 aforesaid.

ARGUMENT.

While this case involves a constitutional question the same is so well settled by the previous decisions of this court that the court should refuse jurisdiction of the case, the alleged constitutional question being unsubstantial.

In the event that the court should hold the constitutional question involved in this case to be sufficiently substantial to justify jurisdiction we believe it clear that the petition should be denied and the judgment of the Circuit Court of Appeals affirmed because the question presented is so well

settled that the same is not now open to serious question.

Since the decision in the case of *Baltimore & Ohio Railway Company v. Chambers*, 207 U. S. 142, 52 L. Ed. 143, it is clear that statutes of the character of Section 7709 of the General Laws of Minnesota for 1913 are repugnant to the Federal Constitution and especially to Article IV, Section II of the Constitution of the United States and also the Fourteenth Amendment to the Constitution of the United States.

If the motion to dismiss or affirm as made herein be denied the cause should be advanced to the Summary Docket. But one question is presented in this case; it is not complicated; it is a simple straight-out question and under the decisions of this court the question is now well settled.

Certainly the matter is not of sufficient importance to justify extended argument before the court and any arguments necessary in the presentation thereof can be well and easily made within the time allotted for argument of causes on the Summary Docket of the court.

TOM DAVIS, AND
ERNEST A. MICHEL,
Attorneys of Record for
Respondent, Gus Eggen,
419 Metropolitan Bank Building,
Minneapolis, Minnesota.

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 281.

CANADIAN NORTHERN RAILWAY COMPANY,

Petitioner,

vs.

GUS EGGEN,

Respondent.

Respondent's Brief.

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Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 281.

CANADIAN NORTHERN RAILWAY COMPANY,

Petitioner,

vs.

GUS EGGEN,

Respondent.

STATEMENT OF THE CASE.

This action is one to recover damages for personal injuries sustained by Respondent while employed by Petitioner as a switchman on one of its lines of railroad in the Dominion of Canada.

The case comes before this court for the determination of the constitutionality of a Minnesota statute.

At the time of receiving his injuries and at the time of the commencement of the action, Respondent was a citizen of the State of South Dakota.

The Petitioner is a railway corporation organized under the laws of the Dominion of Canada.

While employed by Petitioner and working in the Province of Saskatchewan in the Dominion of Canada, Respondent was injured through the negligence of the railway company.

A portion of the line of railroad of Petitioner extends into the State of Minnesota.

No portion of its line extends into the State of South Dakota.

To secure jurisdiction and have his rights determined in the United States the respondent brought his action in the State of Minnesota.

The action was tried in the United States District Court, Second Division, Mankato, Minnesota.

At the close of the testimony, the District Court granted the motion of Petitioner (Defendant in Error in the court below) to direct a verdict in its favor, on the ground that the action was barred by the Statute of Limitations of one year in force in Canada at the time of the injury to Respondent.

This Statute of Limitations had been duly set up in the answer of the railway company but the claim was made by Respondent that he was not bound by the limitation in question.

The District Court granted the motion of the railroad company and directed a verdict in its favor.

Thereafter Respondent sued out a Writ of Error and the case came duly on to be heard before the Circuit Court of Appeals of the United States for the Eighth Circuit.

The Circuit Court of Appeals reversed the District Court and granted to Respondent a new trial.

The railway company then petitioned this honorable court for a writ of *certiorari* to review the action of the Circuit Court of Appeals. This writ was granted and the case is now before this court for determination on the writ of *certiorari* so granted.

After the writ of *certiorari* was granted by the Supreme

Court the Respondent made a motion to dismiss, affirm or advance the cause to the Summary Docket. On such motion the cause was advanced to the Summary Docket.

STATEMENT OF FACTS.

The Respondent was injured because of negligence in the handling of the train whereon he was employed as a brakeman.

He was a young man, twenty-eight years old and a citizen of the Village of Vienna in the State of South Dakota, in which state he was born.

In the fall of 1913 he was employed by the Canadian Northern Railway Company as a brakeman. He was injured at the City of Humbolt in the Province of Saskatchewan by reason of the negligent handling of the train and by reason of certain defects not material to the determination of the question at issue.

He was injured on the 29th day of November, 1913, and brought this action on October 5th, 1915.

At the time of the commencement of the action, he was a citizen of the State of South Dakota and a resident of that state.

After being injured he left the Dominion of Canada and came to his home in the State of South Dakota, which was his home at all times thereafter, and in which place he resided at the time of bringing the action.

The Petitioner contended in both courts below, and those courts agreed with its contention, that Section 306, Chapter 37 of the Railway Act of Canada, being the law applicable to the facts herein, so far as the right to maintain the action is concerned, provided that the action must

be brought within one year.

There was a dispute in both courts below as to whether or not the limitation in Canada was in fact one year, but both courts concurred in holding that this was the effect of the Canadian law.

It is undisputed that the limitation requirement is no part of the cause of action but is purely a statute of limitations. This being so, of course, this law can have no extra territorial force, and the law of the forum, Minnesota, being Section 7701, General Statutes of Minnesota for 1913, governs as to the time within which the action may be brought. This Section 7701 is an ordinary statute of limitations and under its provisions an action for personal injuries may be brought at any time within six years from the accrual of the cause of action.

There is, however, another statute in Minnesota which, if constitutional, applies to the case at bar and this is the statute which gives rise to the question now before this court for determination.

The statute in question reads as follows:

> "7709. WHEN A CAUSE OF ACTION ACCRUES OUT OF STATE—When a cause of action has arisen outside of this state, and, by the laws of the place where it arose, an action thereon is barred by lapse of time, no such action shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued (4083)."

THE ISSUE.

As the case now stands there is only one question to be determined by this Court.

The question is this:

Is Section 7709 of the General Laws of Minnesota, 1913, above quoted, unconstitutional as being violative of Article IV, Section II of the Constitution of the United States, reading as follows:

> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states;"

and as violative of the Fourteenth Amendment to the Constitution of the United States which is as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

At the close of all the testimony in the District Court the Petitioner made a motion for a directed verdict on the following grounds:

> "At this time we ask the court to direct the jury to bring in a verdict in favor of the defendant, on the ground that the action is barred by the Statute of Limitations both of the State of Minnesota and of the Dominion of Canada; and also upon the further ground that as a matter of law, the plaintiff was guilty of contributory negligence."

Upon the argument of the motion for the directed verdict attention was directed to the statute of Minnesota, in force at the time, being Section 7709, Revised Laws of Minnesota, 1913, reading as follows:

> "7709. WHEN CAUSE OF ACTION ACCRUES OUT OF STATE—When a cause of action has arisen outside of this state, and by the laws of the place where it arose, an action thereon is there barred by

lapse of time, no such action, shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued (4083)."

The plaintiff (in the District Court) maintained that this statute was unconstitutional in that it gave rights and privileges to the citizens of the State of Minnesota which it denied to citizens of the State of South Dakota.

It is undisputed that under the statutes and the law of the State of Minnesota, the limitation for bringing an action to recover damages for personal injuries by a servant against his master is six years.

Quackenbush v. Village of Slayton, 120 Minn. 373, 139 N. W. 716.

After the argument of counsel the court made the following statement:

"Generally speaking the statute of limitations of the forum is the one that governs the action. This action is one for personal injury and is a transitory action, and is governed by the laws of Minnesota as to the time when such action can be brought. Ordinarily the statute of limitations for bringing personal injury actions in Minnesota, as I understand it, is six years, although I think there has been some question whether or not it may be two years; but my understanding is that the Supreme Court has held that the six years statute of limitations applies. A further provision of the statute which may apply to this case is Section 4083 of the Revised Laws of 1905.

This Section 4083 reads as follows:

'When a cause of action has arisen outside of this state, and, by the laws of the place where it arose an action thereon is there barred by lapse of time, no such action shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued.'

The first question to be taken up is whether this cause of action arose outside of the state; secondly, whether it is barred by the laws of the place where it arose; third, whether it is owned and has been owned since it accrued by a citizen of this state. The record in the case shows conclusively that this cause of action arose in Canada, and as to the last question there is no controversy about that either.

The plaintiff is not a citizen of this state, and never has been (but has at all times resided in and been a citizen of the State of South Dakota). The remaining question is whether this cause of action having arisen in Canada has been barred there by the lapse of time.

Section 306 of the Railway Act of 1906 reads as follows:

> 'All actions or suits for indemnity for any damages or injury sustained by reason of the construction or operation of the railway shall be commenced within one year next after the time when such supposed damage is sustained, or if there is continuation of damage, within one year next after the doing or committing of such damage ceases, and not afterwards.'

That statute has been before the courts of Canada a number of times, and I judge from the reported cases, has caused some little trouble to the judges in that jurisdiction to determine just exactly what construction is the proper one to be placed upon that act. The latest case, at least the latest case to which my attention has been called, is to the effect that that section is a statute of limitation and that it applies not only to a cause of action arising under the statute, but also to causes of action arising under the common law; and that it is a statute applying throughout Canada, and overrides any local statute or enactment which might apply merely to some of the provinces in Canada. This seems to be held in the case of *Peszeniczy against the Canadian Northern*, 35 W. L. R. 551, by a majority of the judges composing the court, although there were two dissenting opinions. Other decisions are to the same effect. It seems to me, in view of these decisions, that the present case is one that would be barred and is barred by lapse of time in Can-

ada where the action arose, and that the plaintiff at the present time could not maintain his cause of action in the courts of Canada by reason of the lapse of time; and if this is so, then in my judgment, Section 4083 of the Minnesota Statute applies here, assuming that it is a valid statute.

This Section 4083 of the Statute of Minnesota has been before the courts of this state a number of times. I remember one case quite distinctly in which the statute was applied, *Luce v. Clarke* which is found in the 49th Minnesota, page 356. That case has been followed and the statute applied in a number of subsequent cases, but as far as I know the (question) of the constitutionality of this statute has never been before the state court.

The question is an interesting one and to my mind is not free from doubt. There may, however, be a distinction between the rights of a litigant which are substantive, and the rights which are merely procedural. The latter may not come within the constitutional provision invoked by counsel for plaintiff.

If a citizen of Iowa comes into the State of Minnesota, it may be that the State of Minnesota can not pass a statute which would prevent him from bringing an action. But it is quite a common thing for states to pass statutes that when a citizen of one state comes into a sister state and brings action, he may be compelled to put up a bond for costs, whereas the citizen of the home state is under no such obligation. It is not as a general proposition true that citizens of every state have under all circumstances the exact rights of procedure that citizens of some other state may have. A citizen of the State of Illinois cannot come into the State of Minnesota and sue an Illinois corporation in the Federal Court, unless he has some special grounds therefor. He cannot base jurisdiction on the ground of diversity of citizenship; whereas, a citizen of the State of Minnesota can sue an Illinois corporation in the Federal Courts of Minnesota basing jurisdiction on the ground of diversity of citizenship. So, I think there may be a distinction between substantive rights and rights that are merely those of procedure. It seems to me that this statute of limitation comes

rather under the latter than under the former class. While the question is not free from doubt in my own mind, still I have the opinion and so hold that Section 4083 of the Revised Laws of Minnesota of 1905 is constitutional, that it applies to this cause of action, and that this action cannot now be maintained in this state.

Taking this view of the matter, I will not pass upon the other questions raised by the motion; as to contributory negligence of the plaintiff and the assumption of risk. I will rest the case solely upon this one question; so that if the parties see fit to seek review, they will be in a position to have a short record before the appellate court."

The Circuit Court of Appeals of the eighth circuit, in an opinion by Judge Stone, concurred in by Judge Carland, held that the Minnesota statute was unconstitutional as being violative of Article IV, Section II of the Constitution of the United States. From the opinion of the Circuit Court, Judge Hook dissented.

The majority of that court held that the limitation in the province of Saskatchewan in the Dominion of Canada for the bringing of actions of this character was one year, but held that the law of the forum, Minnesota, governed and that law provided six years in which to maintain the action. The Circuit Court held that plaintiff was entitled to bring his action at any time within that six year period, the same as a citizen of Minnesota.

A majority of the Circuit Court, upon a careful consideration of the questions involved, held that Section 7709, General Statutes of Minnesota, 1913, was unconstitutional as violative of Article IV, Section II of the Constitution of the United States. The Circuit Court held that in view of its opinion that the Minnesota law contravened Section II, Article IV of the Constitution, a con-

sideration of the applicability of the Fourteenth Amendment was unnecessary.

After a review of the applicable decisions, Judge Stone, speaking for the court said:

> "We regard Section 7709 as opposed to this constitutional requirement, as it has been expounded in the above decisions, and therefore void.
>
> "Defendant seeks to draw a distinction between the right to bring a suit and the continuing right to bring it. A discrimination in the right to bring a suit five years after it accrues is as much a substantial discrimination as one in bringing the suit originally. Any difference is of degree, not of kind. * * * This statute, like many other state laws resulting in discrimination between citizens of different states, may have much to commend it, but such considerations have no place in constitutional tests, nor could they weigh against the paramount object of this constitutional provision, which aims at unified nationality as opposed to confederation."

In a dissent filed by Hook, Judge, the position was taken that the "Constitution does not pick up all local procedural details."

Judge Hook further stated that, "The statute of Minnesota does not deny non-residents the right to sue in its courts on causes of action arising elsewhere. It keeps its courts open to all as long as is allowed in the foreign jurisdiction where the cause of action arose, and then gives *further time* to those of Minnesota, and only those who have owned the cause of action ever since it accrued."

Judge Hook further states where "the discrimination" is "reasonable" the statute should be sustained.

CONTENTIONS OF RESPONDENT.

Respondent contends:

That Section 7709, G. S. Minnesota 1913 is unconstitutional.

> "7709. WHEN A CAUSE OF ACTION ACCRUES OUT OF STATE—When a cause of action has arisen outside of this state, and, by the laws of the place where it arose, an action thereon is barred by lapse of time, no such action shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued (4083)."

That this statute contravenes Section II, Article IV of the Constitution of the United States, reading as follows:

> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states;"

That this statute could not legally be enacted or enforced because of the limitations placed upon the states by the Fourteenth Amendment which is as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law;"

That Section 7709 gives to a citizen of Minnesota privileges and immunities which it does not give to a citizen of South Dakota;

That, under this statute, a Minnesota plaintiff can main-

tain his action in Minnesota for an injury received in Canada even though barred by the statute of limitations of the place where the cause of action arose. But a citizen of the state of South Dakota does not have this right. And for no reason except that he is a citizen of South Dakota.

Respondent contends that Gus Eggen would be deprived of a *fundamental privilege* if he were not entitled to maintain his action in the courts of Minnesota.

Respondent contends that *the right to sue in the courts of a state is a fundamental right and privilege within the meaning of the constitutional provision above quoted.*

Respondent contends that if Minnesota desires to shut out actions commenced in its courts by citizens of other states, who have duly obtained jurisdiction of defendants within the borders of Minnesota, that Minnesota must then, also, deny to citizens of Minnesota the right to sue such defendants, the same as such right is denied to citizens of South Dakota.

Respondent contends that the right to sue in the courts and to maintain actions is one of the rights and privileges intended to be protected by the Constitution of the United States and that all citizens of the United States are entitled to equality of opportunity in this respect.

ARGUMENTS, POINTS AND AUTHORITIES.

The decision of the Circuit Court of Appeals holding the Minnesota law, Section 7709, G. S. 1913, unconstitutional is clearly in line with the uniform holding of this court.

Before coming to a consideration of this question, however, let us see what construction the Minnesota court has

placed on this very statute.

In any early case, construing a statute which was the forerunner of the present Section 7709 and which was substantially the same as the present law and in a decision which has never been reversed or modified, the Minnesota Supreme Court held that the purpose of this law was to give to citizens of Minnesota greater rights than to persons who were not citizens of this state.

> "The effect of it is, simply to allow a citizen of Minnesota to plead the statute of limitations of a foreign state or country when it is more favorable than our own, and to allow the same citizen, when he is plaintiff in a foreign cause of action, which he has had from the time it accrued, the benefit of our own statute; or, *in other words, it confers a privilege on a defendant when sued by a foreigner which it denies to him when sued upon the same demand by a domestic plaintiff.* Our own statute of limitations is always open to such of our citizens as can bring themselves within it, and foreign statutes may also be taken advantage of against foreign plaintiffs when more favorable than our own. THERE IS NO GOOD REASON WHY A FOREIGNER WHO ALLOWS A CLAIM AGAINST ONE OF OUR CITIZENS TO BECOME STALE BY HIS OWN LAWS, SHOULD COME HERE AND REVIVE IT."
>
> *Fletcher v. Spaulding*, 9 Minn. 54 (64).

From this decision it is clear that the effect and intent of Section 7709 was and is to give to citizens of Minnesota privileges which are denied to non-citizens.

There can be no question but that *the statute permits a discrimination and that this discrimination is based solely on the ground of citizenship.*

In fact the question at issue before this Court really narrows down to this:

Is the right to bring an action in the courts of a state

one of the "privileges" guaranteed to the citizens of each state by Section II of Article IV of the Constitution of the United States?

Was the State of Minnesota prohibited from enacting or enforcing Section 7709, G. S. Minnesota, 1913, because of the Fourteenth Amendment?

RIGHT OF ACTION IS PROPERTY.

What is a right of action? Is it something of value or is it something too hazy to have any real or substantial worth? This question has been answered by this honorable court and it has been held that:

> "A right of action to recover damages for an injury is property and the legislature has no power to destroy such property."
>
> See *Angle v. Chicago, St. Paul, Minneapolis & Omaha Railway Company,* 151 U. S. 1, 38 L. ed. 55, 14 Sup. Ct. Rep. 240.

There can be no controversy as to the holding in the Angle case. This court has stated that a right of action is property. This being true, and an action to recover for damages for an injury being properly brought, *can the State of Minnesota keep and retain this privilege for its own citizens but deny it to citizens of other states?*

This is just what Section 7709 permits.

In other words, when Section 7709, Revised Laws of Minnesota, allows an action to be maintained by a citizen of the State of Minnesota, when the action arose in a foreign jurisdiction and is barred by the laws of the place where it arose, but prohibits a non-citizen of the State of Minnesota from maintaining his action in the courts of this state, such statute clearly gives to resident citizens of

Minnesota a "privilege" which it denies to citizens of South Dakota, and it also gives to citizens of Minnesota "property" and denies to non-citizens the right to such "property" and the equal protection of the laws.

> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states—."

What is meant by the word "privileges?"

Have the courts defined the word "privileges" as used in Section II, Article IV of the Constitution?

If the courts have defined this term and the word "privileges" has been held to include the right to maintain actions in the courts, there can be no reason why this court should not promptly affirm the Circuit Court of Appeals and preserve the constitutional rights of Mr. Eggen.

WHAT ARE PRIVILEGES?

In *Corfield v. Coryell*, 4 Wash. C. C. 371-380, Fed. Cas. No. 3230, the facts, briefly, were these:

The legislature of New Jersey passed a law which provided in substance that it should be unlawful for a person "who is not, at the time, an actual inhabitant and resident of this state, to gather oysters in any of the rivers, bays or waters in this state."

The question arose whether this statute did not violate Article II of Section IV of the Constitution of the United States.

The court held that the statute was not violative of the constitutional provision, holding that oysters in the bays and waters within the state were common property of all the citizens of the state, and that the state could pass

laws providing for the enjoyment of this common property of the citizens of the state exclusively by its citizens.

In his opinion, Washington, Judge, used the following language which has been often referred to in decisions of the Supreme Court of the United States and especially in the case of *Chambers v. Baltimore & Ohio Ry. Co., post.* The definition of Judge Washington has been accepted and followed with approval in many cases from the date of the Corfield case, 1823, to the present time.

> "The next question is, whether this act infringes that section of the Constitution which declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states?' The inquiry is, *what are the privileges and immunities of citizens in the several states?* We feel no hestitation in confining these expressions *to those privileges and immunities which are, in their nature, fundamental;* which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; *to institute and maintain actions of any kind in the courts of the state;* to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state; may be mentioned as some of the

particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental."

The courts all agree with Judge Washington when he says in the case of *Corfield v. Coryell* that the word "privileges" as used in the Constitution must be confined to those privileges which are *fundamental.*

Under Section 7709, G. S. Minnesota 1913, *fundamental rights and privileges* are given and allowed to citizens of Minnesota but the same rights and privileges are denied to citizens of South Dakota and other states.

Can such a law be given force and effect in view of the constitutional provision giving citizens of the United States "all privileges and immunities of the citizens of the several states?"

PURPOSE OF THE CONSTITUTIONAL LIMITATIONS.

Both Article IV, Section II and the Fourteenth Amendment have been several times construed by the Supreme Court of the United States.

The purpose of these provisions has been set forth in many cases. A review of these decisions clearly shows that the courts have always guarded the privileges intended to be granted or preserved by these constitutional provisions.

In *Paul v. Virginia*, 8 Wall. 168-180, 19 L. ed. 357-360, the facts were these: The legislature of the State of Virginia provided by statute that foreign insurance companies should not carry on business in the State of Virginia without first securing a license, depositing bonds of a spec-

ified character with the Treasurer of the State and without complying with other requirements not here material. A subsequent act also provided that no person could act as an agent for any such foreign insurance company unless such company had duly complied with said law.

Paul, a resident of Virginia, was appointed as agent for a New York company. He refused to file the bonds required by the statutes, wrote a policy of insurance, was arrested, convicted and sentenced to pay a fine of $50.00. His conviction was affirmed by the Supreme Court of Appeals of Virginia.

The Supreme Court of the United States upheld his conviction, holding that *a corporation* was not *a citizen* within the meaning and language of Article IV, Section II of the Constitution of the United States, providing that "the *citizens* of each state shall be entitled to all privileges and immunities of *citizens* in the several states." The point was raised by Paul that the law of Virginia violated this constitutional provision in that it gave to *citizens* of Virginia rights which it did not give to *citizens* of other states.

In the decision by the Supreme Court of the United States Mr. Justice Fields pointed out very clearly that if the foreign insurance company were a *citizen* within the meaning of the constitutional provision that then the law would be invalid. But the court held that a corporation was not a *citizen* within the meaning of that provision and therefore not entitled to the benefits thereof.

Mr. Justice Fields stated the purpose and object of the constitutional provision in question in the following clear and concise language:

> "It was undoubtedly the object of the clause in question (Const. Art. IV, Sec. II) *to place the citi-*

zens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned. It relieves them from the disabilities of alienage in other states; it inhibits discriminating legislation against them by other states; it gives them the right of free ingress into other states, and egress from them; it insures to them in other states the same freedom possessed by the citizens of those states in the acquisition and enjoyment of property and in the pursuit of happiness; and *it secures to them in other states the equal protection of their laws. It has been* JUSTLY SAID THAT NO PROVISION IN THE CONSTITUTION HAS TENDED SO STRONGLY TO CONSTITUTE THE CITIZENS OF THE UNITED STATES ONE PEOPLE AS THIS. Indeed, without some provision of the kind removing from the citizens of each state the *disabilities* of *alienage* in the other states, and giving them *equality* of *privilege* with citizens of those states, the republic would have constituted little more than a league of states; it would not have constituted the Union which now exists."

If the object of the Constitution was to place the citizens of each state upon the same footing with citizens of other states, as Mr. Justice Fields stated is was, and there can be no argument on this point, it is clear that the Minnesota statute, Section 7709, Revised Laws of Minnesota, 1913, which gives privileges to citizens of Minnesota which it withholds from citizens of other states, is contrary to this constitutional provision and clearly void.

In *Ward v. Maryland*, 12 Wall. 418-430, 20 L. ed. 449-452, the facts, briefly, were these:

The Legislature of Maryland passed a law providing that persons not permanent residents in the state be prohibited from selling any goods whatever, except agricultural products, within the state, without first obtaining a license so to do.

Ward was a citizen of the State of New Jersey and not a permanent resident of the State of Maryland. Without having obtained the license called for by this statute, he sold goods, other than agricultural products, in the State of Maryland. For this violation of the statute he was convicted and sentenced to pay a fine of $400.00 in the Criminal Court of Baltimore. On appeal to the highest court of Maryland, his conviction was upheld, whereupon he sued out a Writ of Error to the Supreme Court of the United States, claiming that the law in question discriminated against citizens of states other than Maryland, and that the same was repugnant to Article IV, Section II of the Constitution of the United States.

While Mr. Justice Clifford, speaking for the Court, stated an attempt would not be made to define the words "privileges and immunities," he did in fact give an excellent definition of the purpose of those words as used in Article IV, Section II:

> "Attempt will not be made to define the words '*privileges and immunities,*' or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of *very comprehensive* meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one state to pass into any other state of the Union for the purpose of engaging in lawful commerce, trade or business, without molestation; to acquire personal property; to take and hold real estate; *to maintain actions in the courts of the state.*"

The Supreme Court reversed the conviction of Ward saying:

> "Viewed in any light the court is of the opinion that the statute in question imposes a discriminating

> tax upon all persons trading in the manner described in the district mentioned in the indictment, who are not permanent residents in the state, and that *the statute is repugnant to the Federal Constitution,* and invalid for that reason."

It is significant that in practicalty every decision wherein courts define "privileges and immunities" as used in the constitution, they include in the definition "*the right to institute and maintain actions in the courts.*"

In *Cole v. Cunningham,* 133 U. S. 107-114, 33 L. ed. 538-542, U. S. Supreme Court 269-271, it appeared that one Bird, a citizen and inhabitant of the State of Massachusetts, was indebted to Butler, Hayden & Company, citizens of that State. Bird became insolvent but had due and owing him a considerable sum from the firm of Claflin & Company of New York. After his insolvency was made known to them, the Butler concern executed an assignment of their claim to one Fayerweather, a resident of the State of New York. Thereafter actions were commenced in New York in the name of Fayerweather against Bird, the said Claflin & Company being garnisheed in the proceedings. Thereafter assignees in insolvency of the estate of Bird were duly appointed in Massachusetts and commenced an action in Massachusetts seeking to restrain the prosecution of the action in New York, so that the assets of the insolvents might be recovered by the assignees in insolvency. Butler, Hayden & Company answered, contending that the proceedings, being regular in New York, the Full Faith and Credit clause of the Constitution of the United States, Sections I and II, Article IV, prevented any interference by the Massachusetts court. The court below found, as a fact, that the purpose of the assignment to

Fayerweather was to give a preference to Butler, Hayden & Company, and held that an injunction should issue. While the Supreme Court of the United States in this case also held that the injunction was proper, Mr. Justice Fuller, in speaking of the intention of Article IV, Section II of the Constitution said:

> "The intention of Section II of Article IV, was to confer on the citizens of the several states a *general citizenship*, and to communicate all the privileges and immunities which the citizens of the same state would be entitled to under like circumstances, and *this includes the right to institute actions*. The fact of the citizenship of Butler and Hayden did not affect their privilege to sue in New York and have the full use and benefit of the courts of that state in the assertion of their legal rights; but as that fact might affect the right of action as between them and the citizens of their own state, the courts of New York might have held that its existence put an end to the seizure of their debtor's property by Butler & Hayden in New York. If, however, those courts declined to take that view, it would not follow that the courts of Massachusetts violated any privilege or immunity of Massachusetts' own citizens in exercising their undoubted jurisdiction over them."

Here again the court states plainly that the right to institute actions is one of the "privileges" granted by the Constitution.

The intention of Article II, Section IV was to confer a general citizenship. Why? So that all citizens of the United States might have equal privileges in each and all of the states; so that one state could not give to its own citizens or to citizens of any other state rights and privileges which it withheld from all citizens of all other states.

In the famous *Slaughter House Cases*, 16 Wall. 36, 21

L. ed. 394, the court had under consideration a charter of a corporation created by a statute of the State of Louisiana. The case arose by reason of the efforts of certain butchers of New Orleans to prevent the Slaughter House Company from the exercise of certain powers conferred by the charter which created it. This charter gave the corporation the exclusive right to land and slaughter animals intended for food within the boundaries named. Butchers were allowed to slaughter their own animals in the slaughter houses of the company but were required to pay reasonable compensation for the use of the accommodations furnished by the company. Penalties were enacted for any infraction of this provision of the charter.

The contention was made, in part, that this statute abridged the privileges and immunities of citizens of the United States contrary to the provisions of the Fourteenth Amendment and that it violated Article IV, Section II.

The Court held that no discrimination against citizens of other states was permitted by the charter. When it came to a consideration of the purpose of Article IV, Section II, "the citizens of each state shall be entitled to all privileges and immunities of citizens of the several states," the Court referred to the leading case of *Corfield v. Coryell*, *supra*, with approval. The Court further stated that the constitutional provision, Article IV, Section II, did not *create* any right, privileges or immunities of citizens of the states nor did it pretend to control the power of such states over the right of its own citizens, but

> "Its sole purpose was to declare to the several states that WHATEVER THOSE RIGHTS, AS YOU GRANT OR ESTABLISH THEM TO YOUR OWN CITIZENS, or as you limit or qualify, or impose restriction on their exercise, THE SAME, NEITHER

MORE NOR LESS, SHALL BE THE MEASURE OF THE RIGHTS OF CITIZENS OF OTHER STATES WITHIN YOUR JURISDICTION."

Slaughter House Cases, 16 Wall. 36, 77, 21 L. ed. 394-409.

So far as counsel for Respondent have been able to learn the language above quoted has never been criticised and the declaration of the purpose of Article IV, Section II as there set forth stands with the stamp of approval by many decisions of this court.

Minnesota grants to her citizens six years within which to maintain an action for personal injuries, regardless of where the injuries were sustained and regardless of any limitation statutes of any other state or country.

Citizens of other states, if an injury arose without the State of Minnesota and the claim is barred by lapse of time by the laws of the place where it arose, may not maintain their action in Minnesota.

> "Whatever those rights as you grant or establish them to your own citizens" * * * the right to maintain an action granted and established to a Minnesota citizen for six years and to a non-citizen one year * * * "the same *neither more nor less* shall be the measure of the right of citizens of other states within your jurisdiction."

Either the purpose of the constitutional provision is not as above stated or else the Minnesota law contravenes this constitutional provision.

Minnesota *does* "limit or qualify" the right of a non-citizen to maintain an action in its courts.

Minnesota *does not* "limit or qualify" the right of a Minnesota citizen to maintain the same identical kind of an action in its courts.

RIGHT TO INSTITUTE ACTION.

Were the Respondent, Gus Eggen, a resident of the State of Minnesota, under Section 7709, Revised Laws of Minnesota, 1913, he would have been entitled to maintain his action against the Canadian Northern Railway Company, Petitioner, in the courts of the State of Minnesota, despite the fact that the action would have been barred by the Statute of Limitations of the Province of Saskatchewan in the Dominion of Canada, assuming for the purpose of the argument that his right of action was there barred.

But because he, a citizen of the United States of America, happens to be a citizen and resident of South Dakota, he is denied this right and this privilege which is given to a citizen of the State of Minnesota.

He is denied the right to seek redress in the courts of Minnesota, because he is not a citizen of the State of Minnesota, but is a citizen of the State of South Dakota.

The constitutional provision intended to confer a general citizenship upon all citizens of the United States. The Minnesota statute abridges the right of citizens of South Dakota, when they seek redress in the Minnesota courts.

> "The intention of Paragraph II, of Article IV, was to confer on the citizens of the several states a GENERAL CITIZENSHIP, and TO COMMUNICATE ALL THE PRIVILEGES AND IMMUNITIES WHICH THE CITIZENS OF THE SAME STATE WOULD BE ENTITLED TO UNDER LIKE CIRCUMSTANCES, AND THIS INCLUDES THE RIGHT TO INSTITUTE ACTIONS."
>
> *Cole v. Cunningham*, 133 U. S. 107-114, 33 L. ed. 538-542, 10 Sup. Ct. Rep. 269-271, *supra*.

The more clearly to show the discrimination permitted by this statute, let us suppose Eggen, who was a resident

and citizen of the State of South Dakota, moved from the State of South Dakota across the line into Minnesota and became a resident and citizen of Minnesota.

Under Section 7709, he would become a "citizen of the state who has owned the cause of action ever since it accrued."

His right of action could not, therefore, be barred by the Canadian limitation statutes, because he would then be a resident and a citizen of Minnesota.

His removal into Minnesota and his becoming a Minnesota citizen would clearly give him the same right to maintain an action that a citizen of Minnesota would have.

What act would it be, then, that gave him this right? *Simply the act of moving across the state line and becoming a citizen of Minnesota.*

It being practically conceded in this case that there is a discrimination by reason of Section 7709, is not the sole and only reason of the discrimination the non-citizenship of Eggen?

If he changes his citizenship he may maintain the action.

If he remains a citizen of South Dakota he cannot maintain the action.

To secure his Day in Court he must become a citizen of the State of Minnesota.

The discrimination against him is based, therefore, solely on the fact of his being a citizen of South Dakota.

This is the very discrimination the Constitution was intended to prevent.

Were it not for Section 7709 Eggen could maintain his action in Minnesota.

This statute prevents a non-citizen from suing in the courts of Minnesota. Why? *Solely because of his non-*

citizenship.

On what then is the discrimination based? Non-citizenship and nothing else.

The Constitution says no such discrimination is permissible.

The Constitution is superior to the statute. The statute is repugnant to the Constitution. The statute must, therefore, fall.

Let us suppose Gus Eggen were a citizen of Minnesota and that he met his death while employed by the petitioner in Canada owing to its negligence. Let us further suppose that a right of action was given to his parents dependent upon him and that such parents resided in the State of South Dakota.

After his death such parents, assuming the statute of limitations in Canada applicable to the facts in the case to be one year, would have to commence their action in Minnesota within one year. This would be so solely because they were citizens of South Dakota. If they were citizens of Minnesota the statute of limitations of Minnesota would apply.

Even though Eggen were a citizen of Minnesota when killed his personal representative, if he were a citizen of South Dakota, would be bound by the limitation provided under the Canadian statute, and would not be governed by the law of the forum as would a citizen of Minnesota.

NON-RESIDENTS, FUNDAMENTAL PRIVILEGES, BONDS.

Blake v. McClung, 172 U. S. 239-266, 43 L. ed. 432-438, 19 Sup. Ct. Rep. 165-172, arose because of a statute of

Tennessee which provided that residents of Tennessee were entitled to priority of payment out of the assets of a foreign corporation in case of insolvency.

The Embreville Company, so-called in the opinion, a British corporation, authorized to do business in the State of Tennessee, became insolvent. McClung & Company filed a bill in chancery asking the appointment of a receiver and other relief. A creditor, Blake, filed a petition in intervention setting forth that the McClung Company claimed a priority in the collection of assets u. the Tennessee statute, and that the statute was unconstitutional as conferring benefits on the plaintiffs over other citizens of the United States. The Chancery Court of Appeals and the Supreme Court of the state held the statute valid and not in contravention of the Constitution of the United States.

The Supreme Court of the United States reversed the Supreme Court of the state, so far as the Plaintiff in Error, Blake, was concerned, and the opinion written by Mr. Justice Harlan, after a review of the cases of *Corfield v. Coryell, Paul v. Virginia, The Slaughter House Cases* and *Cole v. Cunningham,* and after quoting from these cases statements such as:

> "Its sole purpose was to declare to the several states that whatever those rights as you grant or establish them to your own citizens or as you limit or qualify, or impose restriction on their exercise, the same, *neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction;*"

contains this language:

> "*These principles have not been modified by any subsequent decisions of this court.*"

And then Justice Harlan makes this statement:

> "The foundation upon which the above cases rest cannot, however, stand if it be adjudged to be in the power of one state when establishing regulations for the conduct of private business of a particular kind *to give its own citizens essential privileges connected with this business which it denies to citizens of other states.*"

And further:

> "If a state should attempt, by statutes regulating the distribution of the property of insolvent *individuals* among their creditors, to give priority to the claims of such *individual creditors*, as were *citizens* of that state, over the claims of *individual creditors, citizens of other states*, such legislation would be repugnant to the Constitution upon the ground that it withheld from *citizens of other states, as such, and because they were such*, privileges granted to citizens of the state enacting it."

And Justice Harlan clearly points out that if a fundamental privilege is denied to a citizen of the United States by the laws of a state whereof he is not a citizen, such laws are contrary to the letter and spirit of the Constitution. It is only when the privilege is not fundamental that a difference of treatment of privilege is at all permissible.

> "We must not be understood as saying that a citizen of one state is entitled to enjoy in another state every privilege that may be given in the latter to its own citizens. There are privileges that may be accorded by a state to its own people in which citizens of other states may not participate except in conformity to such *reasonable regulations* as may be established by the state. *For instance, a state cannot forbid citizens of other states from suing in its courts, that right being enjoyed by its own people;* but it may require a non-resident, although a citizen of another state to give bond for *costs*, although such bond be not required of a resident. *Such a regulation of the*

internal affairs of a state *cannot reasonably be characterized as hostile to the fundamental rights of citizens of other states.* So, a state may, by rule uniform in its operation as to citizens of the several states, require residence within its limits for a given time before a citizen of another state who becomes a resident thereof shall exercise the right of suffrage or become eligible to office. *It has never been supposed that regulations of that character materially interfered with the enjoyment of each state of the privileges and immunities secured by the Constitution* to citizens of the several states. The Constitution forbids only such legislation affecting citizens of the respective states as will substantially or practically put a citizen of one state in a condition of alienage when he is within or when he removes to another state, or when asserting in another state the rights that commonly appertain to those who are part of the political community known as the people of the United States, by and for whom the government of the Union was ordained and established."

Every contention of the respondent in the case at bar is upheld in the very well and clearly reasoned case of *Chambers v. Baltimore & Ohio Railway Company*, 207 U. S. 142, 52 L. ed. 143, which is perhaps now the leading case in the country on questions of this character.

In this case Chambers was employed by the Baltimore & Ohio Railway Company. He was a resident of Pennsylvania. He was killed in Pennsylvania under circumstances giving rise to a cause of action for his death under the laws of Pennsylvania. His wife was also a resident of the State of Pennsylvania.

Under the laws in Pennsylvania it was settled and conceded that the right of action given by the statute was not a survivorship of the cause of action which decedent might have had if he had not met his death, but a new and orig-

inal cause of action in favor of the surviving widow or personal representative.

After the death of Chambers his wife brought an action to recover damages for his death in the courts of Ohio, she still being a citizen of Pennsylvania. An Ohio statute provided that: "Whenever the *death of a citizen of this state* has been or may be caused by a wrongful act * * * in another state, * * * for which a right to maintain an action and recover damages in respect therefore is given by a statute of such other state * * * such right of action may be enforced in this state."

The Circuit Court of common pleas held that the plaintiff might maintain her action in the courts of Ohio. The Supreme Court of Ohio held that the action authorized by the above quoted statute for a death occurring in another state applied only when the death was that of *a citizen of Ohio;* that the common law of the State of Ohio forbade such action and that as Chambers was a resident and citizen of the State of Pennsylvania at the time of his death, his personal representative could not maintain the action in the courts of Ohio.

Mrs. Chambers brought the case before the Supreme Court of the United States, claiming that Article IV, Section II of the Constitution of the United States had been violated by the action of the Ohio court.

The majority opinion of the Supreme Court was written by Mr. Justice Moody. Before giving the decision of the court, he gave an enumeration of the fundamental principles which he said were controlling in cases of this character. We quote from this opinion:

> "In the decision of the merits of the case there are some *fundamental principles* which are of controlling

effect. * * *

> *"The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship,* and must be allowed by each state to the citizens of all other states to the *precise extent* that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution.

Following the above quotation the cases of *Corfield v. Coryell, Ward v. Maryland, Cole v. Cunningham* and *Blake v. McClung* are cited.

The position of the majority of the court in this case was that, subject to the restrictions of the Federal Constitution, the state had the right to determine the limit of the jurisdiction of its courts and the character of the controversies to be heard therein and that no privilege of Mrs. Chambers had been violated. However, in speaking of the policy of the state in this respect the court said:

> *"But any policy the state may choose to adopt must operate in the same way on its own citizens and those of other states.* The *privileges* which it affords to one class it *must* afford to the other. *Any law by which privileges to begin actions in the courts are given to its own citizens and withheld from the citizens of other states is void, because in conflict with the supreme law of the land."*

In holding that the constitutional provision was not violated by the action of the court below, the Supreme Court of the United States in the Chambers case held that the discrimination was based solely on the citizenship of Chambers at the time of his death. The common law of Ohio permitted no recovery in case of death. The statute in

question permitted a recovery whenever the death of a *citizen of Ohio* occurred in another state and a recovery was permitted by the laws of the state wherein his death occurred.

It will be noticed that the recovery was permitted when the *decedent was a citizen of Ohio.* As further stated by Mr. Justice Moody:

> "The courts were open in such cases to plaintiffs who were citizens of other states, if the deceased were a citizen of Ohio; they were closed to plaintiffs who were citizens of Ohio if the deceased was a citizen of another state. So far as the *parties to the litigation* are concerned, the state, by its laws, made no discrimination based on citizenship, and offered precisely the same privileges to citizens of other states which it allowed to its own. There is, therefore, at least a literal conformity with the requirements of the constitution."

No discrimination was made so far as the citizenship of the party bringing the action is concerned. She is not discriminated against because of *her* citizenship

> "But it may be urged, on the other hand, that the conformity is only superficial; that the death action may be given by the foreign law to the person killed, at the instant when he was *virus et mortua,* and made to survive and pass to his representatives (*Higgins v. Central New England & W. R. Co.,* 155 Mass. 176, 31 Am. St. Rep. 544, 29 N. E. 534) that in such cases it is the *right of action of the deceased* which is brought into court by those who have it *by survivorship;* and that, as the test of jurisdiction is the citizenship of the person in whom the right of action was originally vested, and the action is entertained if that person was a citizen of Ohio and declined if he was a citizen of another state, there is, in a real and substantial sense, a discrimination forbidden by the constitution."
>
> "If such a case should arise and be denied hearing in the Ohio courts by the Ohio law, *then, as the denial would be based upon the citizenship of that person*

in whom the right of action originally vested, it might be necessary to consider whether the Ohio law did not, in substance grant privileges to Ohio citizens which it withheld from citizens of other states."

"The cause of action which the plaintiff sought to enforce was one created for her benefit and vested originally in her. She has not been denied access to the Ohio courts because she is not a citizen of that state, but *because the cause of action which she presents is not cognizable* in those courts. *She would have been denied hearing of the same cause for the same reason if she had been a citizen of Ohio. In excluding her cause of action from the courts the law of Ohio has not been influenced by her citizenship which is regarded as immaterial."*

It is to be noticed here that the court said that if the denial was based upon the *citizenship of the person in whom the right of action originally vested* that it might be necessary to consider whether the law did not in substance grant privileges to Ohio citizens which it withheld from the citizens of other states.

In the case at bar the cause of action originally vested in Gus Eggen. He was denied privileges which would have been granted him had he been a citizen of Minnesota.

Consider for a moment, the paragraph last above quoted: "If such a case should arise and be denied hearing in the Ohio courts by the Ohio law, then, as the denial would be based upon the citizenship of that person in whom the right of action originally vested," etc.

It was just such a case as the case at bar that the court had in mind when this statement was made.

Here we are presented with the very facts which Justice Moody said might necessitate a consideration of whether the Ohio law did not grant *privileges to Ohio citizens which it withheld from citizens of other states.*

In the consideration of the Chambers case we must bear in mind that while the cause of action was not permitted to be maintained this was because "the cause of action which the plaintiff (Mrs. Chambers) sought to enforce was one created for her benefit and *originally vested in her.* She has not been denied access to the Ohio courts because *she is not a citizen of that state,* but because the *cause of action* which she presents is *not cognizable* in those courts. *She would have been denied hearing of the same cause for the same reason if she had been a citizen of Ohio.* In excluding her cause of action from the courts the law of Ohio has not been influenced by her citizenship, which is regarded as immaterial."

But the court was clearly of the opinion that if any fundamental right was denied her, *solely because of her citizenship,* that then an inquiry would have to be made to determine whether or not citizens of Ohio had privileges which citizens of other states could not and did not have.

And the Chambers case is also important in determining whether *the right to maintain an action* is one of the *rights and privileges* intended to be preserved by the constitution.

A reading of the decision by Mr. Justice Moody can leave no room for doubt but that in the mind of the court at that time, there was no question but that *the right to maintain an action* was one of the fundamental privileges intended to be guaranteed and preserved by the Constitution.

How zealous the courts have always been to uphold and protect the rights of citizens of the United States from discrimination at the hands of legislatures of some of the states is shown by the fact that in the Chambers case, Mr.

Justice Harlan, Mr. Justice White, now Chief Justice, and Mr. Justice McKenna dissented from the decision of the majority of the Court, being of the opinion that, *even under the facts as shown in the Chambers case*, there was a discrimination and a denial of privileges to citizens of Pennsylvania which the Constitution did not permit.

Mr. Justice Harlan in his dissent, said:

> "That exception, upon whatever basis it may be rested, must fall before the Constitution of the United States and be treated as a nullity. The denial to the widow or representative of Chambers of the right to sue in Ohio, upon the ground that he was not a citizen of Ohio when killed, was the denial, in every essential sense, of a *fundamental privilege* belonging to him under the Constitution, in virtue of his being a citizen of one of states of the union—the *right to sue and defend in the courts of justice, which right this court concedes to be 'one of the highest and most essential privileges of* citizenship.' While in life Chambers enjoyed the right—and it was a most valuable right * * *."

Again Justice Harlan says:

> "But Ohio takes this right of protection from him; for the Ohio court would have taken cognizance of this action if the decedent, Chambers, had been, when killed, a citizen of Ohio, while it denies relief to his widow, and puts her out of court solely because her husband was, when killed, a citizen of another state. It thus accords to the Ohio widow of a deceased Ohio citizen a *privilege* which it withholds from the Pennsylvania widow of a deceased Pennsylvania citizen."

Whether the following language of Justice Harlan applies to the action of the courts of Ohio in the Chambers case or not, it surely is applicable to the statute in force in Minnesota:

> "The case is plainly one in which Ohio attempts, in reference to certain kinds of actions that are main-

tainable in perhaps every state of the union, including Ohio, to give to its own citizens *privileges* which it denies, under like circumstances, to citizens of other states. To a citizen of Ohio it says: 'If you go into Pennsylvania, and are killed while there, in consequence of the negligence or default of someone, your widow may have access to the Ohio courts in a suit for damages, provided the wrongdoer can be reached in Ohio by service of process.' But to the citizen of Pennsylvania it says: 'If you come to your death in that state by reason of the negligence or default of someone EVEN IF THE WRONGDOER BE A CITIZEN OF OHIO, your widow shall not sue the Ohio wrongdoer in an Ohio court for damages, because, and only because, you are a citizen of another state. * * *.'"

Further Mr. Justice Harlan says:

"I SUBMIT THAT NO STATE CAN AUTHORIZE ITS COURTS TO DENY OR DISREGARD THE CONSTITUTIONAL GUARANTY THAT THE CITIZENS OF EACH STATE SHALL BE ENTITLED TO ALL THE PRIVILEGES AND IMMUNITIES OF CITIZENS IN THE SEVERAL STATES."

In the last paragraph of his dissenting opinion Justice Harlan again makes it clear that in his mind the denial of the *right to institute and maintain actions in the courts* is a denial of a *substantive* and fundamental right and where this right is *forbidden* a non-resident by the statutes of a state, but the right is *given* to a resident, the statute is unconstitutional.

The Chambers case is a complete and full answer and solution to the question of whether or not Section 7709, Revised Laws of Minnesota, 1913, is unconstitutional.

Under the decision of the Chambers case and the other cases herein referred to there can be no question but that

this statute is absolutely unconstitutional. The proposition is not to our minds debatable.

The language of the Minnesota statute is plain; the language of Article IV, Section II and the Fourteenth Amendment to the Constitution of the United States is plain.

The sole question is whether these constitutional provisions are violated by the Minnesota statute.

The Chambers case and the other decisions hereinbefore referred to clearly hold that such a law as Minnesota now has in force, denying to a resident of another state a fundamental and substantive right—a right alternative of force, to institute and maintain actions in the courts of the State of Minnesota—is unconstitutional.

The Chambers case is decisive of the case at bar for this reason: *It leaves it absolutely undisputed that the right to maintain actions in the courts is one of the fundamental privileges the Constitution guarantees and protects* and that this right must be given *to non-citizens of the state the same as to citizens, no more, no less, and without any restrictions or reservations* that are not of *equal application* to *citizens* and *non-citizens*.

In the case at bar the discrimination is based solely on citizenship.

The discrimination permissible under Section 7709 prevents the bringing of an action in the courts of Minnesota and the statute cannot stand the exposure of the constitutional search light.

Among the later cases cited by this court, is the case of *Chalker v. Birmingham and N. W. Railway Company*, U. S. Advance Opinions No. 13, decided April 21st, 1919, —— Supreme Court ——.

That was an action involving a law of Tennessee licens-

ing foreign construction companies with their "*chief office outside of this state*" $100.00, while *local* construction companies were charged a license of $25.00.

Mr. Justice McReynolds, speaking for the court in that case, cited *Ward v. Maryland* and *Blake v. McClung, supra*, and further said:

> "We can find no adequate basis for taxing individuals according to the location of their chief offices—the classification, we think, is arbitrary and unreasonable. Under the Federal Constitution a citizen of one state is guaranteed the right to enjoy, in all other states, equality of commercial privileges with their citizens."

Nor is their any adequate basis for giving a citizen of Minnesota five years longer in which to maintain an action than a person not a citizen of Minnesota.

As stated by Justice Stone in the opinion in this case in the Circuit Court of Appeals:

> "Defendant seeks to draw a distinction between the right to bring a suit and the continuing right to bring it. A discrimination in the right to bring a suit five years after it accrues is as much a substantial discrimination as one in bringing the suit originally. Any difference is of degree, not of kind."

In the case of *Maxwell, et al. v. Bugbee*, and *Hill v. the same*, 40 Supreme Court 2, decided October 27th, 1919, an Act of New Jersey was before the court for consideration on the question of whether or not it discriminated against persons not residents and citizens of that state. The court held generally that the law in question was a tax on the *right of succession*, a creature of local laws, and within the taxing power of the state.

However, in speaking of Article IV, Section II, Mr. Justice Day said:

> "The provision quoted from Article IV of the Constitution was intended to prevent discrimination by the several states against citizens of other states in respect of the *fundamental privileges of citizenship.*"

Then the following is quoted from Cooley's Constitutional Limitations, Seventh Edition, page 569:

> "It appears to be conceded that the Constitution secures in each state to the citizens of all other states the right to remove to, and *carry on business therein;* the right by the usual modes to *acquire* and *hold property,* and *to protect and defend the same in the law; the right to the usual remedies for the collection of debts* and the *enforcement of other personal rights;* and the right to be exempt, in property and person, from taxes or burdens which the property, or persons, of citizens of the same state are not subject to." *Paul v. Virginia,* 8 Wall. 168, 180, 19 L. ed. 357; *Ward v. Maryland,* 12 Wall. 418-430, 20 L. ed. 449.

While the court in the Maxwell case held that there was no discrimination under the New Jersey statute, this was not on the theory that the state could give to citizens and residents privileges which it could withhold from non-residents or non-citizens, but simply on the theory that the tax in question was not upon property but upon the *privilege of succession.* The state could *grant* or *withhold* this privilege of succession. The State of New Jersey could say that no one could inherit property, or the state could say that property could be inherited upon certain conditions. This was all that the statute in question did.

Justice Day, however, very plainly stated: "New Jersey could not deny the *residents in other states* the right to take legacies which it *granted to its own citizens.*"

We find no case in which the rule as set forth in the Chambers case and the earlier cases is not in all things ex-

pressly followed, approved and applied.

Under the decisions of this court, if there be any discrimination relative to a fundamental right of a citizen of the United States—if a state statute gives citizens privileges or grants immunities which are fundamental, and which it denies to non-citizens—then this statute is unconstitutional.

This is clearly the uniform holding of the court and the case at bar must be determined on the sole question of whether or not the privilege denied to the respondent was fundamental.

It has been so many times stated that *the right to maintain an action is one of the fundamental rights the Constitution intended to preserve* that it seems needless to further pursue this subject.

If Section 7709, G. S. Minn., 1913, is constitutional then the decisions of this honorable court, beginning with *Paul v. Virginia* decided November 1st, 1869, and ending with *Maxwell v. Bugbee*, decided October 27th, 1919, are wrong.

We do not think the principles enunciated in these decisions are wrong. If the court upholds them, Section 7709, G. S. Minnesota, 1913, cannot be upheld.

And it is, of course, inconceivable that the settled policy of constitutional and statutory construction and the decisions of our court from 1869 to 1919 on this question would now be overturned.

The argument of Petitioner that to hold the Minnesota law unconstitutional would nullify statutes in existence for many years is not of great weight in determining whether the Minnesota law is unconstitutional.

In the noted case of *Slocum v. New York Life Insurance Company*, 228 U. S. 364, 57 L. ed. 879, 33 Sup. Ct. Rep. 523,

the court held that the practice of granting judgment notwithstanding the verdict of a jury, even though permitted under the Pennsylvania statutes could not obtain in the Federal Courts because of the Seventh Amendment to the Constitution providing that "in suits at common law, where the value in controversy shall exceed $20.00, the right of trial by a jury shall be preserved."

In the dissenting opinion of Mr. Justice Hughes it was stated that the decision overturned the *established practice* of the Pennsylvania courts *in existence for many years* but the majority of the court held the practice contrary to the constitutional provision and therefore not permissible.

CONSIDERATION OF PETITIONER'S POINTS AND AUTHORITIES.

Under the above heading, we wish to consider some of the arguments of Respondent and as these arguments follow generally the theory of the trial court and the dissent of Mr. Justice Hook from the majority opinion of the Circuit Court of Appeals, we will consider them together.

We believe the trial court is in error in the distinction he makes between substantive rights and rights which are merely procedural (Record pages 35-37).

In this case the statute prohibits Mr. Eggen from maintaining his action in our courts.

It is no matter of procedure. It does not say to a citizen of South Dakota, "You may come into Minnesota and maintain an action here, but you must first comply with certain requirements before you can do this."

It does not say that he must go through any procedure before he is entitled to the use of our courts, but *it wholly*

bars him from the use of our courts to collect his claim.

The words of Mr. Justice Washington, in the case of *Corfield v. Coryell, supra*, are clearly in point, wherein he says that among the particular privileges and immunities which are to be deemed FUNDAMENTAL are the right "TO INSTITUTE AND MAINTAIN ACTIONS OF ANY KIND IN THE COURTS OF THE STATE."

If that be a fundamental right then it is the same right of a litigant which the trial court refers to as "substantive" (Record page 36).

Certainly the right to maintain actions in the courts is not a right which is "merely procedural."

In the case of *Ward v. Maryland*, 12 Wall. 418-430, 20 L. ed. 449-452, the court states that "THE RIGHT TO MAINTAIN ACTIONS IN THE COURTS OF THE STATE, IS FUNDAMENTAL."

Section 7709, Revised Laws of Minnesota, 1913, denies absolutely the right of respondent to maintain his action. His right of action is property (*Angel v. C., St. P., M. & O. Ry. Co.*, 151 U. S. 1, 38 L. ed. 55) and this right of property is absolutely and entirely taken away from him.

The question of procedure does not enter into the matter.

In all the cases we have been able to find, the court speaks of the right to maintain an action as a *fundamental right*. The word "substantive" as used by the trial court, on page 36 of the record, is used in the same sense as the word "fundamental."

While we admit there may be a distinction between the rights of the litigant which are *substantive and fundamental* and the rights which are *merely procedural*, it is clear that the right to maintain an action is a SUBSTANTIVE AND FUNDAMENTAL RIGHT. Certainly it is not a

mere PROCEDURAL RIGHT.

We again believe the trial court reasons erroneously when he says, on page 37 of the Record, that a non-resident "may be compelled to put up a bond for costs, whereas a citizen of the home state is under no such obligation." Therefore, he reasons, the statute in question is not unconstitutional, because it has been common for states to pass statutes and compel persons to put up bonds and comply with other procedural matters before maintaining their action.

This very question was spoken of by this court in the case of *Blake v. McClung*, 172 U. S. 239-256, 43 L. ed. 432-438, 19 Sup. Ct. Rep. 165-172.

> "For instance, a state cannot forbid citizens of other states from *suing in its courts*, that right being enjoyed by its own people; but it may require a non-resident, although a citizen of another state, *to give bond for costs*, although such bond be not required of a resident * * * *It has never been supposed that regulations of that character* materially interfered with the enjoyment by citizens of each state of the *privileges* and immunities secured by the Constitution to citizens of the several states."

In this case it will be noted that the court says:

> "The Constitution forbids only such legislation affecting citizens of the respective states as will SUBSTANTIALLY OR PRACTICALLY put a citizen of one state in a condition of alienage when he is within or when he removes to another state, or when asserting in another state the rights that commonly appertain to those who are part of the political community known as the people of the United States * * *."
>
> *Blake v. McClung*, 172 U. S. 256, 43 L. ed. 438-9, 19 Sup. Ct. Rep. 172.

The Minnesota statute does substantially and practically put the Respondent in a condition of alienage.

From the line of decisions of this court hereinbefore quoted it is plain that the right to institute and maintain actions in the courts of the state is a *fundamental right.*

The fact of giving a bond is not one of these fundamental rights, as is shown by the opinion in *Blake v. McClung, supra.*

The decisions of this court clearly dispose of the argument of the trial court relative to a non-resident giving a bond, and therefore, not having all the rights and privileges of a citizen. The giving of a bond is not a substantive or a fundamental matter. Compelling a person to give a reasonable bond does not deprive that person of the right to enter our courts. The giving of a bond might result in the deprivation of such right in case the provisions of the bond were made so onerous that they could not be complied with. That, however, would present another question.

The sole question here at issue is whether or not a denial of *the right to institute and maintain this action* is a denial of a *substantive and fundamental right.*

The decisions are universal to the effect that *the right to institute and maintain actions is fundamental.* The denial of that right deprives an injured person of a property right and of a fundamental right and privilege guaranteed him by the Constitution of the United States.

In speaking of the Constitution of the United States in this brief we have generally referred to Article IV, Section II.

We also contend that the Fourteenth Amendment to the Constitution prohibits the enactment and enforcement of such a statute as Section 7709, Revised Laws of Minnesota, 1913.

A reading of the statement of the trial court indicates that the usual reluctance to declare a statute unconstitutional actuated him in upholding this statute.

The constitutionality of the statute has never heretofore been questioned, so far as we have been able to discover, but this fact certainly cannot make the statute any the less unconstitutional.

It is not a statute under which property rights have been acquired, or under which a practice has grown up which it would be unwise to disturb, but it is a statute which denies to a citizen of the United States a substantive and a fundamental right—the right to maintain actions in the courts of this state.

THE DISSENT OF JUDGE HOOK.

The position taken by Judge Hook in his dissent is, first; that the court should proceed with caution in declaring a statute unconstitutional.

With this general proposition we have no quarrel and there need be no argument regarding it.

Judge Hook next contends that in questions of doubt the "consideration of reasonableness" may be resorted to to uphold a statute.

This perhaps might be true in cases where that "consideration of reasonableness" might be brought into the argument. It has no place here.

Judge Hook further says that some difference in treatment is warranted by a difference in conditions and he then says:

"The privileges and immunities contemplated by the

Constitution are those which are of a fundamental character."

This, of course, is entirely true, but then Judge Hook says:

> "State legislation contains many discriminations in favor of resident debtors and creditors, which no one would seriously contend now are invalid. For examples: Permitting attachment against a non-resident debtor without bond while requiring a bond in attachment against a resident; non-residence, of itself without more, as a ground for attachment of the owner's property; the running of a statute of limitations in favor of a resident debtor but not in favor of a non-resident one; requiring a bond of a non-resident creditor in bringing suit but dispensing with it if he is a resident."

The discriminations above set forth by Judge Hook are not discriminations of a *fundamental character*. The attachment statutes proceed on the theory of the sovereign power of the state over property within its borders and no non-citizen owning property within the state is denied his day in court.

No person under any of the exceptions stated by Mr. Justice Hook above is denied his day in court as is Mr. Eggen, the respondent in the case at bar.

It seems to us that the rights that Justice Hook sets forth come very close to coming under the head of "Local Procedural Details" which he says the Constitution does not pick up.

He says the "statute of Minnesota does not deny non-residents the right to sue in its courts on causes of action arising elsewhere. It keeps its courts open to all *as long as is allowed* in the *foreign jurisdiction* where the cause of action arose, and *then gives further time to those in Min-*

nesota, and only those who have '*owned* the cause of action ever since it accrued.' "

Considering this statement for a moment, can it be said that there is equality of treatment afforded by the Minnesota statute? It keeps its court open to *all* citizens of the United States as long as is allowed in the foreign jurisdiction. *To citizens of Minnesota it keeps the courts open five years longer.*

The expression "owned the cause of action ever since it accrued" has nothing to do with the case at bar.

The statute shortened by five years the time in which Eggen could maintain his action. This was done solely because he was a citizen of South Dakota and not a citizen of Minnesota.

Justice Hook refers to the Chambers case but does not distinguish the case or give any reason why the rule there laid down is not applicable to the facts in the case at bar.

THE CASE OF CHEMUNG CANAL BANK *vs.* LOWERY, 93. U. S. 72.

In the dissent of Judge Hook and in the brief for Petitioner much stress is laid on the case of *Chemung Canal Bank v. Lowery*, 93 U. S. 72, 23 L. ed. 806.

Mention was made in this case of the constitutionality of a statute of Wisconsin, reading as follows: "If, when the cause of action shall accrue against any person, he shall be out of the state, such action may be commenced within the terms herein respectively limited, after the return of said person into this state. But the foregoing provision shall not apply to any case, where, at the time the cause of action shall accrue, neither the party against nor

in favor of whom the same shall accrue, are residents of this state" (R. S. Wis., 822). The case does not in fact go into the question of the constitutionality of the statute.

While the court says that is not unconstitutional, in the argument on the proposition the question of the reasonableness and fairness of the statute is gone into and the question of the *authority* of the legislature to pass such a law is left wholly untouched.

Furthermore, no cases are cited and no reasons given why this law is not an infringement of the constitutional provisions, Art. 2, Sec. 4, and the Fourteenth Amendment.

We here quote a portion of the decision, being the same portion quoted in the brief of Petitioner:

> "The other assignment calls in question the constitutionality of the statute of limitations itself. The statute having prescribed the time within which various actions must be brought, amongst others, that an action upon a judgment or decree of any court of record of any state or territory of the United States, or of any court of the United States, must be brought within ten years, it declares, that 'If, when the cause of action shall accrue against any person, he shall be out of the state, such action may be commenced within the terms herein respectively limited, after the return of said person into this state. But the foregoing provision shall not apply to any case, where, at the time the cause of action shall accrue, neither the party against nor in favor of whom the same shall accrue, are residents of this state' R. S. Wis. 822. This statute may be expressed shortly thus: When the defendant is out of the state, the statute of limitations shall not run against the plaintiff, if the latter resides in the state, but shall, if he resides out of the state. The argument of the plaintiff is, that, as the law refuses to non-residents of the state an exemption from its provisions, which is accorded to residents, it is repugnant to that clause of the Constitution of the United States (Art. IV, Sec. 2) which declares that 'The citizens of

each state shall be entitled to all the privileges and immunities of citizens in the several states.' It is contended that, if the resident creditors of the state may sue their non-resident debtors, at any time within six or ten years after their return to the state, non-resident creditors ought to have the same privilege; or else an unjust and unconstitutional discrimination is made against them. This seems at first view, somewhat plausible; but we do not regard the argument as a sound one. There is, in fact, a valid reason for the discrimination. If the statute does not run as between non-resident creditors and their debtors it might often happen that a right of action would be extinguished, perhaps for years, in the state where the parties reside; and yet, if the defendants should be found in Wisconsin, it may be only in a railroad train, a suit could be sprung upon him after the claim had been forgotten. The laws of Wisconsin would thus be used as a trap to catch the unwary defendant, after the laws which had always governed the case had barred any recovery. This would be inequitable and unjust. *[illegible]*, 3 N. J. L. (Green), [illegible]. * * *

We are of opinion, therefore, that the law in question does not produce any unconstitutional discrimination."

Let us examine for a moment this decision, and the language above quoted.

The question before this court is not a question of a reason for the statute.

It is a question of *power*.

"The trap an unwary defendant"—if this be the object or effect of the statute—would make no difference if the statute did in fact contravene the constitutional provision.

[illegible] a debtor can advise himself as to the [illegible] or non-residence of the statute in this state.

The court in that case says:

"This would be inequitable and unjust."

Unjust to whom?

Unjust to a resident of Wisconsin? No.

Or unjust to a non-resident?

It would not be unjust to a resident of Wisconsin.

If there be any inequality or injustice under this particular statute, it could not be to a citizen of Wisconsin but to a citizen of some other state, and this is just what the Constitution says cannot be done.

The only result of the Wisconsin statute or any similar statute is to bring a litigant into court—to give the parties their right to a day in court.

The question is not what the law *ought* to be, what the law *might* be, or whether or not the law operates equitably. It is purely a question of the *constitutional power* of the legislature.

The *Chemung Canal Bank Case, supra*, does not deal with the *power* of the legislature to pass a law discriminating against a non-resident. It rather upholds the statute, because, in the opinion of the court, the law is a *just* one. It is not a question of justice, it is a question of power.

The court says that "There is in fact a valid reason for the discrimination."

This in itself is an answer to the constitutional question.

If there be in fact a *discrimination* in favor of the resident, the statute is unconstitutional.

The Constitution of the United States forbids and prohibits this *discrimination* and while there might be a reason for the *discrimination the Constitution does not allow*

any such *discrimination.*

The court also speaks of the proposition that a stale claim might be revived by the entry of the defendant into the State of Wisconsin. Whether this be true or not does not affect the constitutionality of the statute.

Some states have a two year statute of limitations, some a three year, and some a six year statute of limitations.

The law of the forum governs as to statutes of limitation, and as a result of these different statutes a debt may often be revived in another state. This does not, however, touch the constitutional question involved.

In speaking of the effect of the Wisconsin statute as above quoted, the court, in the Chemung case, concedes that there is in fact a discrimination.

If there be this discrimination then, within the rule in *Chambers v. Baltimore & Ohio Railway Company,* 52 L. ed. 143, 217 U. S. 142, *supra,* such statute is unconstitutional.

The court says in the Chambers case:

> "But any policy the state may choose to adopt must operate *in the same manner on its own citizens and those of other states. The privileges which it affords to one class it must afford to the other.* Any law by which *privileges to begin actions in the courts* are *given to its own citizens* and *withheld from the citizens of other states* is void, because in conflict with the supreme law of the land."
>
> *Chambers v. Baltimore & Ohio Ry. Co., supra.*

In the Chambers case the question of the constitutionality of such a statute was gone into thoroughly and the Chemung case was not even cited by the court.

The reason is apparent.

The Chemung case does not advance any argument on the

constitutionality of the statute in question.

The court in the Chemung case was considering a matter of what the law might reasonably be and the effect of the law, rather than the *power of the legislature* to enact such a law.

The case of *Paul v. Virginia*, 8 Wall. 168, 19 L. ed. 357, and the case of *Ward v. Maryland*, 12 Wall. 418, 20 L. ed. 499, and the *Slaughter House* Cases, 16 Wall. 36, 21 L. ed. 394, all involve the question of the power of the legislature to deprive non-residents of rights and privileges which are accorded to residents. These cases pass on the constitutionality of statutes involving this question.

It is a notable thing that in the Chemung case, decided *after* these cases were decided, *no reference is made to any of these three important cases. These three cases are among the leading cases in the country on constitutional law, involving statutes similar to the one passed on in the Chemung case, and yet they are not even referred to in that decision.*

Comparing the Chemung case with the decision of the court in the case of *Chambers v. Baltimore & Ohio Railway Co.*, which is quoted from and argued from at length in this brief, it is clear that the Chemung case is of no value on the question of the constitutionality of this statute.

The Chemung case is cited by petitioner as upholding the constitutionality of the statute.

The Chemung case does not go into the question of the constitutionality of this satute.

It rather digresses and speaks of the reasonableness of such a law. It does not deal with the power of the enacting body to make such a law and put it into force and effect.

The Chambers case was well and carefully considered; there was dissenting opinions by the present Chief Justice and by Justices Harlan and McKenna. No mention was made of the Chemung Canal Bank case. It is evident from a reading of the Chambers case that the court recognized the great importance of the question involved and it was given exceptionally careful study and consideration.

It appears in the Chemung case that there was a dissent by Mr. Justice Strong, but no reason for the dissent is given.

The majority opinion in the Chambers case was to the effect that the law of Ohio did not in fact *discriminate* against a person because of the citizenship of the plaintiff, and the holding was that if a *discrimination* was in fact based on the *citizenhsip of the plaintiff*, that then there would be a violation of the constitutional provision.

In the Chemung case Mr. Justice Bradley, writing the decision, specifically says that there is a discrimination, but that there is a valid reason for the discrimination.

The court in the Chambers case says that if the *discrimination* be based on the *citizenship* of the plaintiff that then the statute must fall before the constitutional barrier.

The Chambers case is one of the latest expressions of the Supreme Court dealing directly with the proposition at hand. It is a well and carefully considered case in which the constitutional question here involved is carefully gone into, considered and made the basis for the decision and opinion of the court.

If the Chemung case had any weight as a determination

of the constitutional question involved it has been silently overruled by the Chambers case.

The Chambers case clearly holds that a discrimination based on the citizenship of the plaintiff violated the Constitution.

In the Chemung case there is such discrimination based on citizenship and the court says that there is a "reason for the *discrimination.*"

The essential thing to determine is whether or not there *is* such a discrimination and whether it relates to a fundamental right.

If the discrimination exists the *reason* is immaterial. The law cannot stand as against the plain provisions of the Constitution.

We do not believe the Chemung case can be held by the court to have any weight or effect in determining this proposition. No decisions are cited on the constitutionality of the law in question; no argument as to its constitutionality is set forth and the only justification for upholding the law is that there is a "reason for the discrimination."

This explanation of the court in the Chemung case clearly shows the unconstitutionality of the law there considered. The court, however, was not considering a question of the constitutionality of the statute, but evidently was considering the question of whether or not the law was fair and just.

The Chambers case held that where this *discrimination* existed the law violated the Constitution.

The case of *Paul v. Virginia* was decided November 1st, 1869.

The Chambers case decided in 1907 cited and approved

the case of *Paul v. Virginia; Ward v. Maryland* and the *Slaughter House* cases, and clearly expresses the view the Supreme Court has always held on this question. This view can hardly be said to be expressed by the earlier Chemung case, which was determined in 1876, and in which no reference is made to these three leading cases in constitutional law.

Of those cases cited in the brief for Petitioner holding generally that a reasonable classification is not a violation of the privilege and immunity given by the Constitution, it is necessary to make little comment.

None of them hold that any state may take away any fundamental right or privilege of a citizen of the United States solely because he does not happen to be a citizen of that state.

Petitioner seeks to have modified the language used in *Chambers v. Baltimore & Ohio Railway Company, supra,* especially that portion of the opinion which says that the right to sue and defend in the courts must be allowed by each state to the citizens of all other states "*to the precise extent that it is allowed to its own citizens.*"

Petitioner contends that this statement should be read in the light of the general principle, that a reasonable classification may be made if such classification bears a just relation to the matter at hand and is not a mere arbitrary selection.

The argument always turns back to the proposition of whether or not a fundamental privilege is denied to Respondent by refusing him his day in court.

Petitioner says that if the language in the Chambers case "were to be applied literally, it would nullify statutes, admittedly valid, requiring non-resident plaintiffs to

give bonds for costs," etc.

We cannot agree with the contention of Petitioner in this respect. With the validity or non-validity of statutes requiring non-resident plaintiffs to give bonds for costs, we are not now greatly concerned. Such statutes do not take away fundamental rights and are not to be compared with statutes which prevent a plaintiff from having his day in court as does the Minnesota law.

This court, in the case of *Blake v. McClung, supra,* cited, among other rights which were not considered fundamental, the compelling of non-residents to give bonds for costs while bonds might be required of residents. This does not get us to the fundamental proposition, which is the right to a day in court, which the bond does not prevent.

Of course, if a bond were made so onerous as to absolutely prevent a party from coming into court, another matter would be presented for consideration.

In an attempt to find a reason for the discrimination allowed by Section 7709, Petitioner's Counsel say on page six of their brief:

> "Such discrimination in favor of a resident defendant is not invalid, being based on a difference in situation, that is, the difficulty of bringing suit against a non-resident."

Just what Petitioner expects to prove by this contention we are at a loss to understand. Gus Eggen lives in South Dakota. The Canadian Northern Railway Company ran into the State of Minnesota, where he could get jurisdiction.

If he lived in Minnesota it might have been that he could have made service with more facility on the defendant than he could while he lived in South Dakota. So

far as the railroad company was concerned there was no "difficulty in bringing suit against a non-resident."

If there were any difficulty the facility for bringing suit was all in favor of the citizen of Minnesota and against the citizen of South Dakota. Why this should be a reason for *further discrimination against a citizen of South Dakota we do not see.*

Again, on page six of its brief, Petitioner states that the basis for the distinction in the Minnesota statute is not merely the fact of residence but also the fact that the resident plaintiff must have owned the cause of action since it accrued.

This makes no particular difference as far as the inquiry at hand is concerned. But counsel further state that the resident plaintiff "cannot be charged with the same delinquency in prosecuting his claim against a non-resident as is chargeable to a non-resident plaintiff."

This line of argument simply means that delinquency could not be charged to a Minnesota plaintiff who lived right in Minnesota where he could get jurisdiction of the defendant.

But it could be charged to a citizen of South Dakota, who could not get jurisdiction of the defendant within his state and who came into the State of Minnesota to get jurisdiction over that defendant. The reasoning of counsel is faulty.

The argument of counsel regarding diligence in prosecuting the cause of action is not helpful in determining whether or not the statute is constitutional.

If the statute in question provided that a citizen of Minnesota could not maintain his action if it was barred by the laws of Canada and that a citizen of any other

state could not maintain the action, then there would be no discrimination.

But there is no reason why a citizen of Minnesota can have five years longer within which to bring his action, than a citizen of some other state in the Union.

Claims of classification, justification and reasonableness cannot be put forth as a reason for this discrimination against plaintiff in his fundamental rights.

On page eight of their brief, counsel for petitioner state that this statute is based on "practical experience."

What authority counsel has for this statement we do not know. What "practical experience" there has been to demonstrate the wisdom of giving a citizen of Minnesota five years longer to maintain his action than is given to a citizen of any other state in the Union is difficult for us to conceive. We have been unable in our search to find any evidence of this "practical experience."

We do not feel that there is much materiality to the argument of counsel on pages eight and nine of their brief in the attempt to show that the word "citizen" means "resident."

Under the facts in this case the respondent was both a resident and citizen of another state, *and he was discriminated against solely because of this fact.*

Nor are we much concerned with the fact that other states have statutes somewhat similar to the Minnesota statute.

A multiplicity of errors cannot make one right.

In the consideration of a statute that is so clearly unconstitutional as is the statute in the case at bar, the fact of the existence of other unconstitutional statutes gives us little assistance.

The question involved in this case is bigger than the right of Gus Eggen alone; it is a question which involves the right of a state to discriminate against citizens of the United States and to deny them the most fundamental privileges and immunities.

If citizens can be denied the right of access to the courts of a state, what right have they in the state?

If a man is denied access to the courts of a state, then his only alternative must be to take the law into his own hands.

That this Honorable Court will hold that this is the only remedy left for citizens of the United States is inconceivable to us.

We feel that, within the long line of well considered cases from *Paul v. Virginia* to *Maxwell v. Bugbee*, in all of which cases this court has universally upheld the citizens of the United States when asserting fundamental rights and privileges of citizens in other states, under those decisions and under the principles there laid down, that this court must say that *five years of time in which to maintain an action cannot be taken away from a citizen of the United States when he comes into Minnesota if he does not happen to be a citizen of that Commonwealth.*

Gus Eggen, a citizen of the United States, has been deprived of his rights and has been denied the substantive and fundamental right of resorting to the courts of Minnesota to redress a grievance.

To deny him this right violates the Constitution. The statute is contrary to the letter and to the spirit of Article IV, Section II of the Constitution of the United States and contrary to the letter and spirit of the Fourteenth Amendment to the Constitution of the United States.

SUMMARY.

To summarize the claims of the respondent:

1st: The right of the Respondent to maintain his action was not barred by any law or statute of limitations of the Province of Saskatchewan in the Dominion of Canada.

2nd: If this right were barred by any such statute in force in the Province of Saskatchewan, in the Dominion of Canada, it was not barred in the State of Minnesota, where the statute of limitations for the commencement of personal injury actions is six years.

3rd: Section 7709, Revised Laws of Minnesota for 1913, which gives to a citizen of Minnesota rights which are not given to citizens of other states, is violative of Article IV, Section II, of the Constitution of the United States, and also violative of the Fourteenth Amendment to the Constitution of the United States.

In upholding the contention of the Respondent we claim that the Circuit Court of Appeals followed the uniform decisions of this court on questions of constitutional law and that the decision of the Circuit Court of Appeals, holding the Minnesota law unconstitutional, was clearly correct.

Dated Feb. 15, 1920.

Respectfully submitted,

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No. 831281

Supreme Court of the United States.

OCTOBER TERM, 1918.

CANADIAN NORTHERN RAILWAY COMPANY.

Petitioner,

vs.

GUS EGGEN,

Respondent.

Brief of Respondent in Opposition to Petition for Writ of Certiorari.

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STATEMENTS OF FACTS.

This action is one to recover damages for personal injuries sustained by respondent, an employee of the Canadian Northern Railway Company, petitioner.

The respondent is a citizen of the state of South Dakota.

The petitioner is a citizen of the Dominion of Canada.

The respondent was injured while employed by petitioner as a railway brakeman in the Province of Saskatchewan, Canada.

The Canadian Northern Railway Company extends into the state of Minnesota and suit was brought in the state of Minnesota, more than one year after the cause of action arose.

The action was originally commenced in a state court

of Minnesota but removed to the Federal Court solely on the grounds of diversity of citizenship.

As before stated the jurisdiction was founded solely on the question of diversity of citizenship.

There was a controversy in this case as to whether or not the requisite diversity of citizenship existed. The action was brought in Minnesota, which was neither the district of the residence of plaintiff or the defendant. The plaintiff below, respondent here, made a motion to remand the case to the District Court on the ground that no diversity of citizenship existed sufficient to confer jurisdiction upon the United States District Court. This motion was denied.

The District Court held that under the laws in force in the Province of Saskatchewan, Canada, the statute of limitations for the bringing of personal injury actions against railways was one year. The District Court further held that the law of the forum, to-wit: the law of the state of Minnesota, governed so far as the statute of limitations was concerned, save and except as the same was affected by Section 7709, General Statutes of Minnesota for 1913. This statute reads as follows:

> "When a cause of action has arisen outside of this state, and, by the laws of the place where it arose, an action thereon is there barred by lapse of time, no such action shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action even since it accrued."

The District Court held that under this section of the Minnesota Statute the respondent could not maintain his action because it appeared from the testimony that he was a citizen of the state of South Dakota.

The respondent claimed in the District Court that

this statute was repugnant to Article IV, Section II, of the constitution of the United States, which reads as follows:

> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

It was also contended that the statute violated the Fourteenth Amendment to the Constitution of the United States, reading as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

The statute of limitations in Minnesota as applicable to bringing of actions for damages for personal injury is six years. There is no dispute as to this.

(See *Quackenbush v. Village of Slayton*, 120 Minnesota 373; 139 N. W. 716.)

At the close of all the testimony in the District Court a motion was made, under the Minnesota practice, to have the court direct a verdict in favor of the defendant.

This motion was granted by the trial court.

In granting the motion the trial court reviewed the facts and stated that under the laws of Saskatchewan, Canada, an action would have to be brought within one year; that the statute applied to respondent and that it barred his right to maintain this action, owing to the existence of the Minnesota law, Section 7709, G. L. 1913,

respondent not being a citizen of Minnesota.

The court stated that the question of the constitutionality of the Minnesota statute was doubtful but he held it did not violate the Federal constitution. He rested his decision only on this one question, saying:

> "I will rest the case solely on this one question; so that if the parties see fit to seek a review they will be in a position to have a short record before the appellate court."

The respondent sued out a writ or error and the case came duly on to be heard before the Circuit Court of Appeals sitting at St. Louis, Missouri.

On the 18th of November, 1918, the Circuit Court of Appeals handed down an opinion reversing the judgment of the District Court and holding Section 7709, General Statutes of Minnesota 1913, repugnant to Article IV, Section II, of the Constitution of the United States.

The case now comes before the Supreme Court on the petition of the Railroad Company for a writ of certiorari, seeking to review the action of the Circuit Court of Appeals.

As the case now comes before the Supreme Court, the question for decision is whether or not the Minnesota statute hereinbefore quoted is constitutional and whether a writ of certiorari should be allowed to review the decision of the Circuit Court of Appeals.

ARGUMENTS, POINTS AND AUTHORITIES.

The writ of certiorari should not be granted.

The question to be determined by this court involves solely this one proposition:

Is Section 7709, General Laws of Minnesota 1913, unconstitutional?

The section reads as follows:

> "7709. WHEN CAUSE OF ACTION ACCRUES OUT OF STATE.—When a cause of action has arisen outside of this state, and, by the laws of the place where it arose, an action thereon is there barred by lapse of time, no such action shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued (4038)."

Article II of Section IV of the Constitution of the United States is as follows:

> "The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

The Fourteenth Amendment to the Constitution of the United States is in the following language:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Intent of the Minnesota Statute.

A mere reading of the statute makes it clear that the statute gives greater rights to citizens of the state of Minnesota than to citizens of other states.

The Supreme Court of the State of Minnesota in an early case construed this statute, and, in speaking of the

design and intention of the statute, made this statement:

> "The effect of it is, simply to allow a citizen of Minnesota to plead the statute of limitations of a foreign state or country when it is more favorable than our own, and to allow the same citizen, when he is plaintiff in a foreign cause of action, which he has had from the time it accrued, the benefit of our own statute; or, IN OTHER WORDS, IT CONFERS A PRIVILEGE ON A DEFENDANT WHEN SUED BY A FOREIGNER WHICH IT DENIES TO HIM WHEN SUED UPON THE SAME DEMAND, BY A DOMESTIC PLAINTIFF. Our own statute of limitations is always open to such of our citizens as can bring themselves within it, and foreign statutes may also be taken advantage of against foreign plaintiffs when more favorable than our own. THERE IS NO GOOD REASON WHY A FOREIGNER WHO ALLOWS A CLAIM AGAINST ONE OF OUR CITIZENS TO BECOME STALE BY HIS OWN LAWS, SHOULD COME HERE AND REVIVE IT."
>
> *Fletcher v. Spaulding*, 9 Minn. 54 (64).

The Supreme Court of the United States is bound by this construction of the Minnesota statute.

Right of Action is Property.

> "A right of action to recover damages for an injury is property and the legislature has no power to destroy such property."
>
> *Angle v. Chicago, St. Paul, Minneapolis & Omaha Ry. Co.*, 151 U. S. 1, 38 L. Ed. 55.

Purpose of Article IV, Section II.

In the case of *Paul v. Virginia*, 8 Wall. 168-180, 19 L. Ed. 357-360, the Supreme Court said:

> "It was undoubtedly the object of the clause in

question (Const. Art. IV, Sec. II) to place the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned. It relieves them from the disabilities of alienage in other states; it inhibits discriminating legislation against them by other states; it gives them the right of free ingress into other states, and egress from them; it insures to them in other states the same freedom possessed by the citizens of those states in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other states the equal protection of their laws. It has been JUSTLY SAID THAT NO PROVISION IN THE CONSTITUTION HAS TENDED SO STRONGLY TO CONSTITUTE THE CITIZENS OF THE UNITED STATES ONE PEOPLE AS THIS. Indeed, without some provision of the kind removing from the citizens of each state the disabilities of alienage in the other states, and giving them equality of privilege with citizens of those states, the Republic would have constituted little more than a league of states; it would not have constituted the Union which now exists."

If the object of the constitution was to place the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned, the object of the Minnesota statute, Section 7709, Revised Laws of Minnesota 1913, was to give the citizens of Minnesota rights and privileges greater than are given to citizens of other states.

Clearly this is contrary to the constitutional provision and is prohibited by Article IV, Section II.

In the case of *Ward v. Maryland*, 12 Wall. 418-430, 20 L. Ed. 449-452, the court states that "THE RIGHT TO MAINTAIN ACTIONS IN THE COURTS OF THE STATE, IS FUNDAMENTAL."

PURPOSE OF CONSTITUTIONAL PROVISION.

In that great decision wherein the construction of our constitution was before the Supreme Court, known as the *Slaughter House Cases*, the Supreme Court of the United States in speaking of Article IV, Section II, said:

> "Its sole purpose was to declare to the several states that WHATEVER THOSE RIGHTS, AS YOU GRANT OR ESTABLISH THEM TO YOUR OWN CITIZENS, or as you limit or qualify, or impose restriction on their exercise, THE SAME, NEITHER MORE NOR LESS, SHALL BE THE MEASURE OF THE RIGHTS OF CITIZENS OF OTHER STATES WITHIN YOUR JURISDICTION."
>
> *Slaughter House Cases*, 16 Wall. 36-77, 21 L. Ed. 394-409.

A GENERAL CITIZENSHIP.

A study of our constitution, of the debates and proceedings leading up to its adoption shows conclusively that the purpose of the founders of this Nation was to confer a general citizenship upon all citizens of all the states. This has long been recognized by the Supreme Court.

The constitutional provision intended to confer a general citizenship upon all citizens of the United States and the Minnesota statute abridges the right of citizens of South Dakota, when they seek redress in the Minnesota courts.

> "The intention of Paragraph II, of Article IV, was to confer on the citizens of the several states a GENERAL CITIZENSHIP and TO COMMUNICATE ALL THE PRIVILEGES AND IMMUNITIES WHICH THE CITIZENS OF THE SAME STATE WOULD BE ENTITLED TO UNDER LIKE CIRCUMSTANCES AND THIS IN-

CLUDES THE RIGHT TO INSTITUTE ACTIONS."

Cole v. Cunningham, 133 U. S. 107-114, 33 L. Ed. 538-542, 10 Sup. Ct. Rep. 269-271.

The dissenting opinion of Judge Hook of the Circuit Court of Appeals in the case at bar proceeds on the theory that there may be some distinction as to the rights of litigants which would make this statute permissible.

The right to maintain an action is a substantive and fundamental right. It is a privilege. It is not a mere procedural right.

The distinction between substantive rights and privileges and mere matter of detail or procedure is well pointed out in another important case decided by this court.

> "For instance, a state cannot forbid citizens of other states from suing in its courts, that right being enjoyed by its own people; but it may require a non-resident, although a citizen of another state, to give bond for costs although such bond be not required of a resident. * * * It has never been supposed that regulations of that character materially interfered with the enjoyment by citizens of each state of the privileges and immunities secured by the constitution to the citizens of the several states."

In this case the court says further:

> "The constitution forbids only such legislation affecting citizens of the respective states as will SUBSTANTIALLY OR PRACTICALLY put a citizen of one state in a condition of alienage when he is within or when he removes to another state or when asserting in another state the rights that commonly appertain to those who are part of the political community known as the people of the United States."
>
> *Blake v. McClung*, 172 U. S. 256, 43 L. Ed. 438-9, 19 Sup. Ct. Rep. 172.

PRIVILEGES AND IMMUNITIES—WHAT INCLUDED.

The following statement of Mr. Justice Harlan in his dissenting opinion in the case of *Chambers v. Baltimore & Ohio Ry. Co.*, 207 U. S. 142, 52 L. Ed. 143, is especially applicable to the question here under consideration.

> "In the leading case of Corfield v. Coryell, 4 Wash. C. C. 371-380, Fed. Cas. No. 3230, Mr. Justice Washington said: 'The inquiry is, WHAT ARE THE PRIVILEGES AND IMMUNITIES OF CITIZENS IN THE SEVERAL STATES? We feel no hesitation in confining these expressions to those privileges and immunities, which are, in their nature, fundamental, which belong, of right, to the citizens of all free governments, and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent and sovereign. What these fundamental principles are, it would, perhaps, be more tedious than difficult to enumerate.' Among the particular privileges and immunities which are clearly to be deemed fundamental, the court in that case specifies the right 'TO INSTITUTE AND MAINTAIN ACTIONS OF ANY KIND IN THE COURTS OF THE STATE.'"

Mr. Justice Moody in this same case in the main opinion says:

> "THE RIGHT TO SUE AND DEFEND IN THE COURTS IS THE ALTERNATIVE OF FORCE. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. IT IS ONE OF THE HIGHEST AND MOST ESSENTIAL PRIVILEGES OF CITIZENSHIP AND MUST BE ALLOWED BY EACH STATE TO THE CITIZENS OF ALL OTHER STATES TO THE PRECISE EXTENT THAT IT IS ALLOWED TO ITS OWN CITIZENS. Equality of treatment in this respect is not

left to depend upon comity between the states, but is GRANTED AND PROTECTED BY THE FEDERAL CONSTITUTION."

EQUAL TREATMENT OF CITIZENS AND NON-RESIDENTS.

Speaking of the policy that a state might adopt, the court in the *Chambers case* in the majority opinion by Mr. Justice Moody said:

> "But ANY POLICY THE STATE MAY CHOOSE TO ADOPT MUST OPERATE IN THE SAME WAY ON ITS OWN CITIZENS AND THOSE OF OTHER STATES. The privileges which it affords to one class it must afford to the other. ANY LAW BY WHICH PRIVILEGES TO BEGIN ACTIONS IN THE COURTS ARE GIVEN TO ITS OWN CITIZENS AND WITHHELD FROM THE CITIZENS OF OTHER STATES IS VOID, BECAUSE IN CONFLICT WITH THE SUPREME LAW OF THE LAND."

We especially call the attention of the court to the following significant language in the *Chambers case*:

> "But it may be urged, on the other hand, that the conformity is only superficial; that the death action may be given by the foreign law to the person killed, at the instant when he was *vivus et mortua*, and made to survive and pass to his representatives (*Higgens v. Central New England & W. R. Co.*, 155 Mass. 176, 31 Am. St. Rep. 544, 29 N. E. 534) that in such cases it is the right of action of the deceased which is brought into court by those who have it by survivorship; and that, AS THE TEST OF JURISDICTION IS THE CITIZENSHIP OF THE PERSON IN WHOM THE RIGHT OF ACTION WAS ORIGINALLY VESTED, AND THE ACTION IS ENTERTAINED IF THAT PERSON WAS A CITIZEN OF OHIO AND DECLINED IF HE WAS A CITIZEN OF ANOTHER STATE,

THERE IS, IN A REAL AND SUBSBTANTIAL SENSE, A DISCRIMINATION FORBIDDEN BY THE CONSTITUTION.

"IF SUCH A CASE SHOULD ARISE AND BE DENIED HEARING IN THE OHIO COURTS BY THE OHIO LAW, THEN, AS THE DENIAL WOULD BE BASED UPON THE CITIZENSHIP OF THAT PERSON IN WHOM THE RIGHT OF ACTION ORIGINALLY VESTED, IT MIGHT BE NECESSARY TO CONSIDER WHETHER THE OHIO LAW DID NOT, IN SUBSTANCE, GRANT PRIVILEGES TO OHIO CITIZENS WHICH IT WITHHELD FROM CITIZENS OF OTHER STATES."

It is to be noticed here that the court said that if the denial was based upon the citizenship of the person in whom the right of action originally vested that it might be necessary to consider whether the law did not in substance grant privileges to Ohio citizens which it withheld from the citizens of other states.

In the case at bar the cause of action originally vested in Gus Eggen. He was denied privileges which would have been granted him had he been a resident of Minnesota.

We have given some quotations from the main opinion in the *Chambers case* and some from the dissenting opinion.

Both the main opinion and the dissenting opinion bear out the contention of the respondent in this case and both clearly show the unconstitutionality of this statute.

We wish to make it plain that we do not contend that the case of *Chambers v. Baltimore & Ohio Railroad Company* should be reversed or modified. It is clearly in

point and sustains the contention of plaintiff in error in this case.

We do, however, call attention to the dissenting opinion of Mr. Justice Harlan with whom concurred Mr. Justice White and Mr. Justice McKenna. We do this, not for the purpose or criticising the main decision, but because the dissenting opinion in this case expounds, perhaps more freely than does the main opinion, the law with reference to a statute similar to the Minnesota statute.

Mr. Justice Harlan in his dissent, said:

> "That exception, upon whatever basis it may be rested, must fall before the Constitution of the United States and be treated as a nullity. THE DENIAL TO THE WIDOW OR REPRESENTATIVE OF CHAMBERS OF THE RIGHT TO SUE IN OHIO, UPON THE GROUND THAT HE WAS NOT A CITIZEN OF OHIO WHEN KILLED, WAS THE DENIAL, IN EVERY ESSENTIAL SENSE, OF A FUNDAMENTAL PRIVILEGE BELONGING TO HIM UNDER THE CONSTITUTION, IN VIRTUE OF HIS BEING A CITIZEN OF ONE OF THE STATES OF THE UNION, —THE RIGHT TO SUE AND DEFEND IN THE COURTS OF JUSTICE, WHICH RIGHT THIS COURT CONCEDES TO BE 'ONE OF THE HIGHEST AND MOST ESSENTIAL PRIVILEGES OF CITIZENSHIP.' While in life Chambers enjoyed the right—and it was a most valuable right."

Again Justice Harlan says:

> "But Ohio takes this right of protection from him; for the Ohio court would have taken cognizance of this action if the decedent, Chambers, had been, when killed, a citizen of Ohio, while it denies relief to his widow, and puts her out of court solely because her husband was, when killed, a citizen of another state. It thus accords to the Ohio widow

> of a deceased Ohio citizen a privilege which it withholds from the Pennsylvania widow of a deceased Pennsylvania citizen."

Whether the following language applies to the action of the State of Ohio in the *Chambers case* or not, it surely is applicable to the statute in force in Minnesota:

> "The case is plainly one in which Ohio attempts, in reference to certain kinds of actions that are maintainable in perhaps every state of the Union, including Ohio, to give to its own citizens privileges which it denies under like circumstances, to citizens of other states. To a citizen of Ohio it says: 'If you go into Pennsylvania, and are killed there, in consequence of the negligence or default of someone, your widow may have access to the Ohio courts in a suit for damages, provided the wrongdoer can be reached in Ohio by service of process.' But to the citizen of Pennsylvania it says: 'If you come to your death in that state by reason of the negligence or default of someone, EVEN IF THE WRONGDOER BE A CITIZEN OF OHIO, your widow shall not sue the Ohio wrongdoer in an Ohio court for damages, because, and only because, you are a citizen of other states. * * *'"

Further, Mr. Justice Harlan says:

> "I SUBMIT THAT NO STATE CAN AUTHORIZE ITS COURTS TO DENY OR DISREGARD THE CONSTITUTIONAL GUARANTY THAT THE CITIZENS OF EACH STATE SHALL BE ENTITLED TO ALL THE PRIVILEGES AND IMMUNITIES OF CITIZENS IN THE SEVERAL STATES."

The *Chambers case* is a complete and full answer and solution to the question of whether or not Section 7709, Revised Laws of Minnesota, 1913, being the same as Section 4083, Revised Laws of Minnesota, 1905, is constitutional.

Under the decision of the *Chambers case* and the other cases herein referred to there can be no question but that this statute is absolutely unconstitutional. The proposition is not to our minds debatable.

Opinion of the Circuit Court of Appeals.

The Circuit Court of Appeals sustained the contention of respondent as to this statute and in an opinion giving practically all of the important cases bearing on the subject the court clearly demonstrated the unconstitutionality of this law.

The Dissent of Judge Hook.

Judge Hook filed a dissenting opinion which was made the basis of the petition for *writ of certiorari* in this case.

With all due respect to this learned judge, we feel constrained to say that his dissent is clearly erroneous, illogical, and based on faulty reasoning.

In his dissent Judge Hook says:

> "Upon default it is not primarily the duty of the obligee to hunt his debtor beyond the boundaries of the state. He may await his coming within the jurisdiction of its courts."

If Gus Eggen were to wait until the Canadian Northern Railway Company came within the jurisdiction of any court in the state of South Dakota, his period of waiting would be so long that not only would he be barred from prosecuting his action by the statute of limitations but he himself would not survive this "wait."

Judge Hook further says:

> "Some difference in legislative treatment is warranted by difference in conditions. The privileges

and immunities contemplated by the Constitution are those which are of a fundamental character."

This is exactly the proposition here. The courts are in unison in saying that the right to institute and maintain actions in the courts is one of those fundamental and substantive rights and privileges which it was the intention of the Constitution to guarantee to all the citizens of the United States.

The reasoning of Judge Hook strengthens the contention of respondent and does not tend in any way to uphold the contention that fundamental rights can be given to a citizen of one state while citizens of another state are deprived thereof.

Consideration of Appellant's Petition.

In addition to relying on the dissenting opinion of Judge Hook appellant relies on the case of *Chemung Canal Bank v. Lowery*, 93 U. S. 72, 23 L. Ed. 806.

The *Chemung case, supra*, was decided October 30, 1876.

A mere reading of this opinion leads to the inevitable conclusion that the court did not give a great deal of consideration to the constitutional question involved.

The court says: "There is in fact a valid reason for the discrimination."

There can be no reason for any discrimination and the constitution does not permit a discrimination.

Who would be the judge as to when this "valid reason for the discrimination" existed?

The *Chemung case* was argued October 16, 1876, and decided October 30, 1876, fourteen days thereafter.

The *Chemung case* does not mention the *Slaughter House Cases* which were decided three years previous to the *Chemung case*, April 14, 1873.

The *Slaughter House Cases*, so-called, gave rise to an opinion by the Supreme Court of the United States covering over twenty printed pages and are among the most important cases on a constitutional question in this country.

It is indeed peculiar that a case of the importance of the *Slaughter House Cases* should be passed in the *Chemung case* without mention.

In fact the *Chemung case* did not give any authority on constitutional law whatsoever. Only one case is cited in the opinion and that is a case involving the want of equity arising from allowing a litigant to plead the statue of limitations of the forum.

The *Slaughter House Cases* have been cited as a precedent by the courts of this country in more than one hundred twenty-five different cases and thirty times by the Supreme Court of the United States while we find the *Chemung case* cited but a dozen times in all and only two times by the Supreme Court of the United States. One of these times was on a mere question of practice and the other citation consisted only of the following statement:

> "As to discrimination as to non-residents see *Chemung Canal Bank v. Lowery*, 93 U. S. 72, 23 L. Ed. 806."

This citation appears in the case of *Anglo-American Provision Company v. Davis Provision Company*, 198 U. S. 373, 48 L. Ed. 225

Clearly this case is no authority on constitutional law.

The Chemung case cites none of the early cases on constitutional questions and the important constitutional cases decided subsequent to the Chemung case do not cite the Chemung case.

Coming to the most recent decision of the court bearing on this question, the case of *Chambers v. Baltimore & Ohio Railway Company, supra*, we find *no mention of the Chemung case, in the brief of counsel or in the opinion of the court.* And in the *Chambers case*, in addition to the main opinion, there is an exhaustive dissenting opinion and an analysis of cases by Mr. Justice Harlan, with whom concurred Mr. Justice White and Mr. Justice McKenna.

Petitioners in their brief on page 12 say:

> "In other words, the Constitution does not prohibit a discrimination between citizens of different states as to the time within which a suit may be maintained if that discrimination is logically based upon a practical difference in the conditions which have surrounded the prosecution of the claim."

We cannot agree with this contention.

The Constitution does prohibit such discrimination, whether the discrimination be "logical" or illogical.

This reasoning is clearly fallacious. The idea of the framers of the Constitution was that there was to be no discrimination, even though a "logical" reason existed for this discrimination.

We are not impressed with the argument of petitioner that an affirmance of the Circuit Court would result, in effect, in holding that similar statutes are invalid.

We are dealing solely with a question of the construction of a plain provision of the Constitution and the only question is as to the true construction and the

proper construction of plain words. The same reasoning as applied by the court in the case of *Chicago, B. & Q. Ry. Co. v. United States,* 220 U. S. 557, 55 L. Ed. 582, applies in this case.

In that case, in speaking of a construction of the Safety Appliance Act, the court said:

> "We have nothing to do but to ascertain and declare the meaning of a few simple words * * *. There is no escape from the meaning of those words * * *. It is urged that this is a harsh construction. To this we reply that IF IT BE A TRUE CONSTRUCTION its harshness is no concern of the courts."

The attempt of counsel for petitioner on page 15 of the petition to have the word "citizen" declared synonymous with the word "resident" can meet with little encouragement in this court. The terms are not synonymous as has often been held in this court. (See *Cameron v. Hodges*, 127 U. S. 234, 32 L. Ed. 132).

On page 12 of the petition we find this somewhat startling statement:

> "It is not to be imagined that the courts of these states (those of the Eighth Judicial Circuit) would agree with the decision of the Circuit Court of Appeals."

We are not given to a vivid imagination as to such matters nor can we be concerned with what some court might decide upon a proposition not before it.

If one were to presume anything it would be that a State Court would follow the decision of the Circuit Court of Appeals of the United States when that decision was based on the reasoning of such cases as *Paul v. Virginia*, *Ward v. Maryland*, the *Slaughter House Cases* and *Chambers v. Baltimore & Ohio Ry. Co.*, all *supra*.

The fact that other states may have statutes similar to the Minnesota statute can not affect or change a plain consitutional provision.

The Circuit Court of Appeals was clearly right in following the *Slaughter House Cases* and the *Chambers case*.

If the decision of the Circuit Court of Appeals is to be reversed, this court must give to our Constitution a meaning never intended by its framers, or it must fail to give to a plain provision that meaning which the framers intended and which clear language requires.

It will also have to, practically speaking, overrule the long settled principles as laid down in the following cases:

Paul v. Virginia, 88 Wall. 168-180.

Ward v. Maryland, 12 Wall. 418-1230.

Slaughter Houses Cases, 16 Wall. 36-77, U. S. 36-77, 21 L. Ed. 394-409.

McCready v. Virginia, 94 U. S. 391-395, 24 L. Ed. 248.

Blake v. McClung, 172 U. S. 239-249, 43 L. Ed. 432.

Corfield v. Coryell, 4 Washington C. C. 371.

Coe v. Cunningham, 431 U. S. 187.

Chambers v. Baltimore & Ohio Ry. Co., 207 U. S. 142, 52 L. Ed. 143.

From the above decisions it is clear that the *writ of certiorari* should not issue.

Respectfully submitted,

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CANADIAN NORTHERN RAILWAY COMPANY *v.* EGGEN.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 281. Argued March 1, 1920.—Decided April 19, 1920.

The "privileges and immunities" clause of the Constitution, Art. IV, § 2, protects rights which are in their nature fundamental, including the right of a citizen of one State to institute and maintain actions in the courts of another; but in that respect the requirement is satisfied if the non-resident be given access to the courts upon terms that are reasonable and adequate for enforcing whatever rights he may have, even though the terms be not the same as are accorded to resident citizens. P. 562.

The power is in the courts, ultimately in this one, to decide whether the terms allowed the non-resident are reasonable and adequate. *Id.*

A Minnesota statute, in force since 1858, provides that when a cause of action has arisen outside of the State and, by the laws of the place

where it arose, an action thereon is there barred by lapse of time, no such action shall be maintained in the State unless the plaintiff be a citizen thereof who has owned the cause of action ever since it accrued. *Held* constitutional as applied to an action in Minnesota by a citizen of South Dakota against a Canadian corporation for personal injuries sustained by the plaintiff in Canada, the Canadian limitation in such cases being one year, whereas the time allowed in Minnesota, apart from the above provision, is six years. P. 559.
255 Fed. Rep. 937, reversed.

THE case is stated in the opinion.

Mr. William D. Mitchell, with whom *Mr. Pierce Butler* was on the brief, for petitioner:

The power to classify exists, and a difference in right or privilege resulting from classification is not objectionable, provided the classification has a reasonable basis, and rests on a real distinction which bears a just relation to the attempted classification and is not a mere arbitrary selection. *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 294.

Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. *Citizens' Telephone Co.* v. *Fuller*, 229 U. S. 322, 331. Such classification need not be either logically appropriate or scientifically accurate. *District of Columbia* v. *Brooke*, 214 U. S. 138, 150. *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142, 148, 149, must be read in the light of these principles.

The Constitution does not prohibit a discrimination between residents of different States as to the time within which a suit may be commenced if it is based upon a practical difference in the conditions which have surrounded the prosecution of the claim, resulting from a difference in residence. Residence, as affecting the facility for bringing suit, is an important factor in all statutes of limitation. A difference is made in the time allowed to

bring suit against resident and non-resident defendants. Such discrimination in favor of a resident defendant is not invalid.

In the Minnesota statute, the basis for the distinction made by the exception is not merely the fact of residence or citizenship in Minnesota, but the fact that the resident plaintiff, who has owned the cause of action since it accrued, cannot be charged with the same delinquency in prosecuting his claim against a non-resident as is chargeable to a non-resident plaintiff or is imputed to a resident plaintiff who has purchased the claim by assignment from a non-resident. The statute is not a clear and hostile discrimination against citizens of other States. Citizenship is not the sole basis for the discrimination. The exception favors only those who have owned the cause of action since it accrued. Again, it is only where the foreign statute prescribes a shorter period of limitation than the Minnesota statute that any difference exists between resident and non-resident plaintiffs. It applies only to causes of action arising outside of the State.

It may be suggested that the test applied by the statute is not residence, but citizenship, and therefore the justification for classification fails. But the word "citizen," as used in state statutes, is often synonymous with the word "resident" and may be so construed. *Cairnes* v. *Cairnes*, 29 Colorado, 260; *Union Hotel Co.* v. *Hersee*, 79 N. Y. 454; *Smith* v. *Birmingham Water Works Co.*, 104 Alabama, 315; *Risewick* v. *Davis*, 19 Maryland, 82, 93; *Judd* v. *Lawrence*, 55 Massachusetts, 531; *Bacon* v. *Board of State Tax Commissioners*, 126 Michigan, 22; *Cobbs* v. *Coleman*, 14 Texas, 594, 597; *State* v. *Trustees*, 11 Ohio St. 24, 28; *Baughman* v. *National Waterworks Co.*, 46 Fed. Rep. 4, 7; *Harding* v. *Standard Oil Co.*, 182 Fed. Rep. 421; *Devanney* v. *Hanson*, 60 W. Va. 3; *Sedgwick* v. *Sedgwick*, 50 Colorado, 164; *Stevens* v. *Larwill*, 110 Mo. App. 140.

The evident purpose of the legislature and the principles underlying this statute would justify this interpretation if necessary to sustain it. The word "citizen" was used to make it clear that permanent residence or domicile, and not temporary residence, is the test. But if the word "citizen" be accepted as having a different meaning than "resident," the result is the same. Under the Fourteenth Amendment, to be a citizen of Minnesota a person must be a resident of the State.

If the validity of this statute be in doubt, legislative and judicial acquiescence in the validity of such statutes for a long period should operate to resolve that doubt in favor of the statute. The statutes of many other States are substantially identical in terms with, or embody the same principle as, the Minnesota statute. They use the word "citizen," instead of "resident." They have been applied by the courts in hundreds of cases, covering over a period of nearly three-quarters of a century. See, for example, *Penfield* v. *Chesapeake &c. R. R. Co.*, 134 U. S. 351.

The validity of such statutes has been questioned in but four cases (*Chemung Canal Bank* v. *Lowery*, 93 U. S. 72; *Aultman & Taylor Co.* v. *Syme*, 79 Fed. Rep. 238; *Robinson* v. *Oceanic Steam Nav. Co.*, 112 N. Y. 315; *Klotz* v. *Angle*, 220 N. Y. 347), but in each the discrimination between residents and non-residents has been sustained. If there be doubt as to the constitutionality of the law, this long acquiescence would be persuasive, and should be controlling. *Stuart* v. *Laird*, 1 Cranch, 299; *Field* v. *Clark*, 143 U. S. 649, 691.

Although there is a difference between a statute making a distinction between citizens and one making a distinction between residents, only aliens could take exception to the use of the word "citizen" instead of "resident." The privileges and immunities clause does not apply to aliens, and, as to the equal protection clause, it is enough

to say that no alien is a party to this suit, and only those injuriously affected can urge the invalidity of a statute. *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540.

Mr. Ernest A. Michel, with whom *Mr. Tom Davis* was on the brief, for respondent:

The effect and intent of the Minnesota statute is to give to citizens of Minnesota privileges which are denied to non-citizens. *Fletcher* v. *Spaulding*, 9 Minnesota, 54. The statute permits a discrimination based solely on the ground of citizenship.

A right of action to recover damages for an injury is property, which the legislature has no power to destroy. *Angle* v. *Chicago &c. Ry. Co.*, 151 U. S. 1. The action being properly brought, the State cannot keep and retain this privilege for its own citizens and deny it to citizens of other States. The word "privileges" must be confined to those privileges which are fundamental; and includes the right to institute and maintain actions of any kind in the courts of the State. *Corfield* v. *Coryell*, 4 Wash. C. C. 371, 380. See also *Paul* v. *Virginia*, 8 Wall. 168, 180; *Ward* v. *Maryland*, 12 Wall. 418, 430; *Cole* v. *Cunningham*, 133 U. S. 107, 114; *Slaughter-House Cases*, 16 Wall. 36, 77. The right is not "merely procedural."

Respondent is denied the right to seek redress in the courts of Minnesota, because he is not a citizen of Minnesota, but is a citizen of South Dakota. Article IV, § 2, of the Constitution, intended to confer a general citizenship upon all citizens of the United States. *Cole* v. *Cunningham*, *supra;* and because the discrimination in the statute is based solely on citizenship, the statute must fall.

That the Minnesota statute is unconstitutional is conclusively settled by *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142. That case leaves it undisputed that the right to maintain actions in the courts is one of the fundamental privileges guaranteed and protected by the

Constitution, and that this right must be given to non-citizens the same as to citizens, no more, no less, and without any restrictions or reservations that are not of equal application to citizens and non-citizens. See also *Blake* v. *McClung*, 172 U. S. 239, 266; *Chalker* v. *Birmingham & Northwestern Ry. Co.*, 249 U. S. 522; *Maxwell* v. *Bugbee*, 250 U. S. 525.

The contention that to hold the statute unconstitutional would nullify statutes in existence for many years is not of great weight. *Slocum* v. *New York Life Ins. Co.*, 228 U. S. 364.

The statute also contravenes the Fourteenth Amendment.

Chemung Canal Bank v. *Lowery*, 93 U. S. 72, is not in point. The question of the authority of the legislature to pass the statute there involved is left wholly untouched. The question here is not a question of a reason for the statute; it is a question of power.

None of the cases cited by petitioner, holding generally that a reasonable classification is not a violation of the privileges and immunities clause, hold that any State may take away any fundamental right or privilege of a citizen of the United States solely because he does not happen to be a citizen of that State.

MR. JUSTICE CLARKE delivered the opinion of the court.

The only question presented for decision in this case is as to the validity of § 7709 of the Statutes of Minnesota (General Statutes of Minnesota, 1913), which reads:

"When a cause of action has arisen outside of this state and, by the laws of the place where it arose, an action thereon is there barred by lapse of time, no such action shall be maintaind in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued."

The Circuit Court of Appeals, reversing the District

Court, held this statute invalid for the reason that the exemption in favor of citizens of Minnesota rendered it repugnant to Article IV, § 2, of the Constitution of the United States, which declares that "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

The action was commenced in the District Court of the United States for the District of Minnesota, Second Division, by the respondent, a citizen of South Dakota, against the petitioner, a corporation organized under the laws of the Dominion of Canada, to recover damages for personal injuries sustained by him on November 29, 1913, when employed by the petitioner as a switchman in its yards at Humboldt, in the Province of Saskatchewan. The respondent, a citizen and resident of South Dakota, went to Canada and entered the employ of the petitioner as a switchman a short time prior to the accident complained of. He remained in Canada for six months after the accident and then returned to live in South Dakota. He commenced this action on October 15, 1915, almost two years after the date of the accident. By the laws of Canada, where the cause of action arose, an action of this kind must be commenced within one year from the time injury was sustained. If the statute of Minnesota, above quoted is valid, it is applicable to the action, which, being barred in Canada, cannot be maintained in Minnesota by a non-resident plaintiff. If, however, the statute is invalid, the general statute of limitations of Minnesota, allowing a period of six years within which to commence action, would be applicable. The record properly presents the claim of the petitioner that the Circuit Court of Appeals erred in holding the statute involved unconstitutional and void.

It is plain that the act assailed was not enacted for the purpose of creating an arbitrary or vexatious discrimination against non-residents of Minnesota.

It has been in force ever since the State was admitted into the Union in 1858; it is in terms precisely the same as those of several other States, and in substance it does not differ from those of many more. It gives a non-resident the same rights in the Minnesota courts as a resident citizen has, for a time equal to that of the statute of limitations where his cause of action arose. If a resident citizen acquires such a cause of action after it has accrued, his rights are limited precisely as those of the non-resident are, by the laws of the place where it arose. If the limitation of the foreign State is equal to or longer than that of the Minnesota statute, the non-resident's position is as favorable as that of the citizen.

It is only when the foreign limitation is shorter than that of Minnesota, and when the non-resident who owns the cause of action from the time when it arose has slept on his rights until it is barred in the foreign State (which happens to be the respondent's case), that inequality results—and for this we are asked to declare a statute unconstitutional which has been in force for sixty years.

This court has never attempted to formulate a comprehensive list of the rights included within the "privileges and immunities" clause of the Constitution, Art. IV, § 2, but it has repeatedly approved as authoritative the statement by Mr. Justice Washington, in 1823, in *Corfield* v. *Coryell*, 4 Wash. C. C. 371, 380 (the first federal case in which this clause was considered), saying: "We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, *fundamental*." *Slaughter-House Cases*, 16 Wall. 36, 76; *Blake* v. *McClung*, 172 U. S. 239, 248; *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142, 155. In this *Corfield Case* the court included in a partial list of such fundamental privileges, "The right of a citizen of one state, . . . to institute and maintain actions of any kind in the courts of another."

The State of Minnesota, in the statute we are considering, recognized this right of citizens of other States to institute and maintain suits in its courts as a fundamental right, protected by the Constitution, and for one year from the time his cause of action accrued the respondent was given all of the rights which citizens of Minnesota had under it. The discrimination of which he complains could arise only from his own neglect.

This is not disputed, nor can it be fairly claimed that the limitation of one year is unduly short, having regard to the likelihood of the dispersing of witnesses to accidents such as that in which the respondent was injured, their exposure to injury and death, and the failure of memory as to the minute details of conduct on which questions of negligence so often turn.—Thus, the holding of the Circuit Court of Appeals comes to this, that the privilege and immunity clause of the Constitution guarantees to a non-resident precisely the same rights in the courts of a State as resident citizens have, and that any statute which gives him a less, even though it be an adequate remedy, is unconstitutional and void.

Such a literal interpretation of the clause cannot be accepted.

From very early in our history, requirements have been imposed upon non-residents in many, perhaps in all, of the States as a condition of resorting to their courts, which have not been imposed upon resident citizens. For instance, security for costs has very generally been required of a non-resident, but not of a resident citizen, and a non-resident's property in many States may be attached under conditions which would not justify the attaching of a resident citizen's property. This court has said of such requirements:

"Such a regulation of the internal affairs of a State cannot reasonably be characterized as hostile to the fundamental rights of citizens of other States. . . .

It has never been supposed that regulations of that character materially interfered with the enjoyment by citizens of each State of the privileges and immunities secured by the Constitution to citizens of the several States." *Blake* v. *McClung*, 172 U. S. 239, 256.

The principle on which this holding rests is that the constitutional requirement is satisfied if the non-resident is given access to the courts of the State upon terms which in themselves are reasonable and adequate for the enforcing of any rights he may have, even though they may not be technically and precisely the same in extent as those accorded to resident citizens. The power is in the courts, ultimately in this court, to determine the adequacy and reasonableness of such terms. A man cannot be said to be denied, in a constitutional or in any rational sense, the privilege of resorting to courts to enforce his rights when he is given free access to them for a length of time reasonably sufficient to enable an ordinarily diligent man to institute proceedings for their protection.

This is the principle on which this court has repeatedly ruled that contracts were not impaired in a constitutional sense by change in limitation statutes which reduced the time for commencing actions upon them, provided a reasonable time was given for commencing suit before the new bar took effect. *Sohn* v. *Waterson*, 17 Wall. 596; *Terry* v. *Anderson*, 95 U. S. 628, 632; *Tennessee* v. *Sneed*, 96 U. S. 69, 74; *Antoni* v. *Greenhow*, 107 U. S. 769, 774.

A like result to that which we are announcing was reached with respect to similar statutes, in *Chemung Canal Bank* v. *Lowery*, 93 U. S. 72; by the Circuit Court of Appeals, Second Circuit, in *Aultman & Taylor Co.* v. *Syme*, 79 Fed. Rep. 238; *in Klotz* v. *Angle*, 220 N. Y. 347, and in *Robinson* v. *Oceanic Steam Navigation Co.*, 112 N. Y. 315, 324. In this last case the Court of Appeals of New York pertinently says:

"A construction of the constitutional limitation [the one we are considering] which would apply it to such a case as this would strike down a large body of laws which have existed in all the states from the foundation of the government, making some discrimination between residents and non-residents in legal proceedings and other matters."

The laws of Minnesota gave to the non-resident respondent free access to its courts, for the purpose of enforcing any right which he may have had, for a year,—as long a time as was given him for that purpose by the laws under which he chose to live and work—and having neglected to avail himself of that law, he may not successfully complain because his expired right to maintain suit elsewhere is not revived for his benefit by the laws of the State to which he went for the sole purpose of prosecuting his suit. The privilege extended to him for enforcing his claim was reasonably sufficient and adequate and the statute is a valid law.

It results that the judgment of the Circuit Court of Appeals must be reversed and that of the District Court affirmed.

Reversed.